

# Judicial Resolution of Nonconsensual Pornography Dissemination Cases

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Americans are creating and sharing historically unprecedented amounts of homemade non-commercial sexually explicit photos and videos—likely billions of pornographic items every year.<sup>1</sup> Millions of

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<sup>1</sup> To get a sense of scale, see *Sext Much? If So, You're Not Alone*, SCI. AM., <https://www.scientificamerican.com/article/sext-much-if-so-youre-not-alone> [<https://perma.cc/BU5F-5ZRY>] (last visited Mar. 17, 2017) for a 2014 study that found

Americans have had their private pornographic materials disseminated (or threatened to be disseminated) without their consent,<sup>2</sup> and such nonconsensual dissemination can lead to serious and potentially life-altering consequences for victims.<sup>3</sup> Due to the volume and severity of the problems it creates, the dissemination of nonconsensual pornography (sometimes called “involuntary” pornography or “revenge” pornography)<sup>4</sup> has emerged as one of the key social issues of the digital age.

The widely held view is that our legal system does not sufficiently deter and punish the dissemination of nonconsensual pornography.<sup>5</sup> For example, when introducing the Intimate Privacy Protection Act of 2016,<sup>6</sup> Rep. Jackie Speier said:

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fifty-four percent of survey participants had shared intimate content, and *How Common Is Sexting?*, AM. PSYCHOL. ASS'N (Aug. 8, 2015), <http://www.apa.org/news/press/releases/2015/08/common-sexting.aspx> [<https://perma.cc/E47R-ZYNG>] where 88% of survey participants shared intimate content.

<sup>2</sup> One study found that roughly 10.4 million Americans have been victims of threats or posts of such images without their permission. Amanda Lenhart et al., *Nonconsensual Image Sharing: One in 25 Americans Has Been a Victim of “Revenge Porn”*, DATA AND SOC'Y RES. INST. (Dec. 13, 2016), [https://datasociety.net/pubs/oh/Nonconsensual\\_Image\\_Sharing\\_2016.pdf](https://datasociety.net/pubs/oh/Nonconsensual_Image_Sharing_2016.pdf) [<https://perma.cc/U98M-TPAM>].

<sup>3</sup> In one study, ninety-three percent of victims said they suffered “significant emotional distress”; eighty-two percent claimed “significant impairment in social, occupational, or other important areas of functioning” due to being a victim; fifty-one percent had suicidal thoughts due to being a victim; and forty-one percent sought psychological services. *CCRI's 2013 Nonconsensual Pornography (NCP) Research Results*, CYBER CIVIL RIGHTS INITIATIVE, <https://www.cybercivilrights.org/wp-content/uploads/2016/11/NCP-2013-Study-Research-Results-1.pdf> [<https://perma.cc/68LC-M8RC>].

<sup>4</sup> Although “revenge porn” is often considered the generic term, we adopt the term “nonconsensual pornography” consistent with guidance from the Cyber Civil Rights Initiative: “The term ‘revenge porn,’ though frequently used, is somewhat misleading. Many perpetrators are not motivated by revenge or by any personal feelings toward the victim. A more accurate term is nonconsensual pornography (NCP), defined as the distribution of sexually graphic images of individuals without their consent.” *See What is Revenge Porn?*, CYBER CIVIL RIGHTS INITIATIVE, <https://www.cybercivilrights.org> [<https://perma.cc/TUY6-WFGB>].

<sup>5</sup> *E.g.*, Erik Ortiz, *Marines Photo Scandal: What Can Revenge Porn Victims Do?*, NBC NEWS, (Mar. 10, 2017), <http://www.nbcnews.com/news/us-news/marines-photo-scandal-what-can-revenge-porn-victims-do-n731241> [<https://perma.cc/M8US-G5FV>].

<sup>6</sup> H.R. 5896, 114th Cong. (2d Sess. 2016).

What makes these acts even more despicable is that many predators have gleefully acknowledged that the vast majority of their victims have no way to fight back. Celebrities and other high-profile victims might be able [to] take on these predators in civil courts, but the average person can't afford that option. Even more disturbing is the number of victims who have mustered the courage and strength to pursue criminal charges, only to learn there is no law that protects them.<sup>7</sup>

Based on the perceived insufficiency of existing law, states have enacted (or are considering) dozens of new "*sui generis*" laws to fill the purported gaps in the existing legal rules. Congress, too, is considering its options. The Intimate Privacy Protection Act did not pass Congress, but Rep. Speier and others have again proposed a new federal *sui generis* bill.<sup>8</sup>

Rep. Speier's statement, echoed by so many other commentators, raises significant questions about how much anti-nonconsensual pornography enforcement is actually taking place. Unfortunately, attempts to answer such questions are plagued by "a real data problem."<sup>9</sup>

As a step towards understanding the scope of existing enforcement activity, this article takes a snapshot of the "observable universe" of nonconsensual pornography enforcement actions. We compiled eighty-nine nonconsensual pornography dissemination enforcement actions dating from 1984 to the end of 2016. Some of these enforcement actions have received substantial media coverage; many others are obscure or were not previously publicized. As we will explain in some detail, our compilation is almost certainly a small subset of the actual universe of enforcement actions that have been brought. Nevertheless, we think additional insights into what

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<sup>7</sup> Press Release, *Congresswoman Speier, Fellow Members of Congress Take on Nonconsensual Pornography, AKA Revenge Porn*, CONGRESSWOMAN JACKIE SPEIER (July 14, 2016), <https://speier.house.gov/media-center/press-releases/congresswoman-speier-fellow-members-congress-take-nonconsensual> [<https://perma.cc/3244-F36D>].

<sup>8</sup> Ending Nonconsensual Online User Graphic Harassment Act of 2017, H.R. 4472 & S. 2162, 115th Cong. (1st Sess. 2017).

<sup>9</sup> Emily Reynolds, *Why There's No 'Silver Bullet' for Ridding the Web of Revenge Porn*, WIRED, (Mar. 16, 2017), <http://www.wired.co.uk/article/revenge-porn-facebook-social-media> [<https://perma.cc/5LLT-W43N>] (quoting Prof. Mary Anne Franks).

enforcement actions actually have been brought—and how they fared—should help inform ongoing deliberations about the regulatory infrastructure needed to effectively address nonconsensual pornography dissemination.

The article proceeds in three parts. Part I describes our compilation and its limitations. Part II explains the compilation's taxonomy. Part III analyzes the compilation. The compilation is presented in four appendices.

### I. MAPPING THE OBSERVABLE UNIVERSE<sup>10</sup>

To examine the widespread skepticism about the regulations on nonconsensual pornography dissemination, we endeavored to measure as much as possible of the “observable universe” of enforcement actions involving nonconsensual pornography dissemination. This part will explain our compilation efforts and the differences between the observable and unobservable universes.

*Universe Scope.* The term “nonconsensual pornography” describes a wide range of activities.<sup>11</sup> We focused only on one type of activity: the nonconsensual dissemination of non-commercial pornography, irrespective of whether the pornography was created or shared consensually. In virtually all of the compiled cases, the disseminator was motivated by “revenge,” harassment, extortion or similar objectives, instead of a goal of catering to viewers' sexual interest. In addition to paradigmatic cases of “revenge porn,” our compilation includes cases involving stolen pornography and model photo shoots gone wrong.

We excluded the following from our compilation:

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<sup>10</sup> Where we refer to a case by a single name, the case is summarized in the appendices.

<sup>11</sup> In particular, nonconsensual pornography includes the nonconsensual creation of explicit photos or videos, whether or not the materials are disseminated further. For more discussion about the nomenclature problems and the wide range of anti-social behavior often semantically grouped together, see Eric Goldman, *The Sex Tape Problem...and a Possible Legislative Solution?*, TECH. & MKTG. L. BLOG (July 11, 2008), [http://blog.ericgoldman.org/archives/2008/07/the\\_sex\\_tape\\_pr.htm](http://blog.ericgoldman.org/archives/2008/07/the_sex_tape_pr.htm) [<https://perma.cc/NW78-YCUU>]; see also Scott R. Stroud & Jonathan A. Henson, *Social Media, Online Sharing, and the Ethical Complexity of Consent in Revenge Porn*, THE DARK SIDE OF SOCIAL MEDIA: A CONSUMER PSYCHOLOGY PERSPECTIVE 13 (Angeline C. Scheinbaum ed. 2017).

- Actions over the nonconsensual creation of pornography that was not disseminated (or threatened to be disseminated) to any third parties, such as voyeurism cases.
- Actions over the nonconsensual secondary dissemination of commercial pornography, such as infringement of a commercial pornographer's copyright.
- "Virtual" pornography cases, such as cases involving "photoshopped" images.<sup>12</sup>
- Child pornography cases, including cases involving sexting by minors. Child pornography nominally fits within the compilation's scope because its creation and dissemination are, by definition, always nonconsensual. However, child pornography cases are voluminous, and they have been the subject of extensive analysis. Nevertheless, we included cases involving depictions of minors where we believed the dissemination was not done for viewers' sexual gratification.
- "Collateral" lawsuits prompted by an adverse consequence attributable to an actual or alleged dissemination of nonconsensual pornography.<sup>13</sup> Examples include:
  - malicious prosecution or similar claims against a government actor for an allegedly unlawful arrest, investigation or prosecution.<sup>14</sup>
  - an employee suing for wrongful termination when the termination responded to the employee's threat to disseminate nonconsensual pornography of a co-worker.<sup>15</sup>

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<sup>12</sup> See, e.g., *Ali v. Facebook, Inc.*, No. 4:14-cv-03066 (S.D. Tex. Oct. 24, 2014).

<sup>13</sup> However, if the underlying dissemination created an enforcement action with a substantive result, we included that action in our compilation. For example, we included *Boschette* because it produced a substantive ruling on the nonconsensual pornography legal questions before the malicious prosecution suit.

<sup>14</sup> E.g., *Rivera v. Hopatcong Borough Police Dep't*, No. 08-2721, 2010 WL 446040 (D.N.J. Feb. 3, 2010); *Vaughan v. Ky. Army Nat'l Guard*, No. 3:15-6-GFVT, 2016 U.S. Dist. LEXIS 53389 (E.D. Ky. Apr. 21, 2016) (and the many related cases, including *Vaughan v. United States*, No. 3:10-54-DCR (E.D. Ky. 2010) (resulting in the ruling 2012 WL 6048699 on Dec. 5, 2012); *Vaughan v. Ky. Army Nat'l Guard*, No. 3:12-34-DCR (E.D. Ky. 2012); *Vaughan v. Ky. Army Nat'l Guard*, No. 3:12-35-DCR (E.D. Ky. May 2, 2012); *Vaughan v. Ky. Army Nat'l Guard*, No. 3:12-53-DCR (E.D. Ky. 2012)).

<sup>15</sup> *Telish v. State Pers. Bd.*, 184 Cal. Rptr. 3d 873 (Cal. Ct. App. 2015).

- an employee's lawsuit against an employer because co-workers had engaged in nonconsensual pornography dissemination.<sup>16</sup>
- attorney discipline for disseminating nonconsensual pornography.<sup>17</sup>
- insurance coverage disputes for civil lawsuits involving nonconsensual pornography dissemination.<sup>18</sup>

*How We Counted Actions.* We compiled eighty-nine enforcement actions involving nonconsensual pornography dissemination. The compilation includes actions that never produced any substantive court opinion if we could find an original source material, such as a complaint. Actions that produced more than one court opinion were counted as a single action.

In some situations, we combined multiple lawsuits by the same plaintiffs into a single action. For example, the Tommy and Pamela Anderson Lee sex tapes resulted in lawsuits against several different defendants, but we counted all the lawsuits as a single enforcement action. Similarly, an enforcement action with the same plaintiff(s) and multiple defendants was counted as a single action. However, we counted parallel civil and criminal enforcements against the same defendant (e.g., *Bollaert*) as separate actions.

*Compilation Methodology.* We generated the compilation through numerous keyword searches in Westlaw and Lexis.<sup>19</sup> We

<sup>16</sup> *McCormick v. Donovan*, 365 F. App'x 247 (2d Cir. 2010).

<sup>17</sup> *People v. Saxon*, No. 16PDJ018, 2016 WL 8540133 (Colo. O.P.D.J. Nov. 7, 2016); *see also Keaton*.

<sup>18</sup> *See, e.g., Liberty Insurance Corp. v Anderson*, No. 1:16CV2249, 2017 WL 2962333 (N.D. Ohio July 12, 2017). Note that this ruling is also outside of the compilation's time scope.

<sup>19</sup> Our search queries included (among others) "revenge porn," "sexual or explicit and photos and 'posted online' and relationship," "sexual or explicit and photos and online and relationship," "sexual or explicit and photos and online," "revenge w/1 porn!" "nonconsensual porn!," "nonconsensual porn! and not 'child porn!,'" "explicit images and nonconsensual or 'without permission' and not child porn!," "involuntary porn!," "involuntary porn! and not child! porn!," and "relationship and send or sent w/2 nude or explicit w/1 photo! or image! or video! and not child porn!" "explicit w/2 image! or photo! or video! and relationship or intimate and not child!" Except where noted, we ran all queries in both Westlaw and Lexis.

We also reviewed case citations for the following statutes (except where nonconsensual pornography references were too commingled with a large number of other references): Alaska Stat. § 11.61.120; Ariz. Rev. Stat., § 13-1425; Ark. Code § 5-26-314; Cal. Penal Code § 647(j)(4); Colo. Rev. Stat. § 18-7-107; Conn. Gen. Stat. § 53a-189c; 11 Del. C. § 1335; Fla.

supplemented this with cases we found ad hoc while doing other research, as well as by following up on news reports. We set a compilation cutoff date of December 31, 2016, but some keyword searches were conducted before then.

*Electronic Database Limitations.* Keyword searches in Westlaw and Lexis are subject to numerous limitations. First, the nomenclature confusion hinders the efficacy of keyword searches. Opinions rarely use terms like “revenge porn” or “nonconsensual pornography,” so we tried an array of keyword searches. Despite our multitudinous efforts, our keyword searches surely did not identify all of the relevant cases in Westlaw or Lexis.

Furthermore, many case materials never make it into the Westlaw or Lexis databases. Each database includes court opinions selectively, and their coverage of state court proceedings is particularly spotty (more on that in a moment). Older opinions never may have been digitized (we also encountered this problem with PACER). Also, compared to other types of cases, nonconsensual pornography cases have a greater likelihood of being partially or fully sealed.<sup>20</sup>

We used PACER to supplement our research into federal court proceedings. However, PACER’s “nature of suit” code, which categorizes cases based on the plaintiff’s substantive claims,<sup>21</sup> does not help because nonconsensual pornography dissemination cuts across a wide variety of claims.

*Limited Visibility on State Court Proceedings.* The electronic databases prioritize appellate rulings and federal district court opinions for inclusion, which leaves state court proceedings underrepresented in their databases. Most state courts do not have an electronic repository of case materials analogous to PACER, so their

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Stat. § 784.049; O.C.G.A. § 16-11-90; Haw. Rev. Stat. § 711-1110.9; Idaho Code Ann. § 18-6609; 750 720 Ill. Comp. Stat. Ann. 5/11-23.5; Kan. Stat. § 21-6101(a)(8); La. R.S. 14:283.2; 17-AM.R.S. § 511-A; Md. Code Ann., Crim. Law § 3-809; MCLS § 750.145e; Minn. Stat. § 617.261; Nev. Rev. Stat. Ann. § 200.604; N.H. Rev. Stat. § 644:9-a; N.J. Stat. § 2C:14-9; N.M. Stat. Ann. § 30-37A-1; N.C. Gen. Stat. § 14-190.5A; N.D. Cent. Code, § 12.1-17-07.2; 21 Okla. St. § 1040.13b; ORS § 163.472; 18 Pa. C.S. § 3131; Tenn. Code Ann. § 39-17-318; Tex. Penal Code § 21.16; Utah Code § 76-5b-203; 13 V.S.A. § 2606; Va. Code Ann. § 18.2-386.2; Rev. Code Wash. (ARCW) § 9A.86.010; Rev. Code Wash. (ARCW) § 4.24.795; Wis. Stat. § 942.09.

<sup>20</sup> For example, *Christman Hubbard* proceeded under seal initially. The filings were not made public for several years after the judge’s issuance of a permanent injunction.

<sup>21</sup> *Nature of Suit Codes*, PACER, <https://www.pacer.gov/documents/natsuit.pdf> [<https://perma.cc/B6T6-UWBJ>].

proceedings are not easily searchable and their filings are not easily retrievable. This makes state court nonconsensual pornography enforcement actions difficult or impossible to compile. In turn, the non-searchability and inaccessibility of state court records obscure a significant part of the total universe because state law and common law doctrines play important roles in the enforcement actions.

In particular, it is not possible to systematically find or track enforcements of the state *sui generis* laws. For example, as discussed in Part III(D) *infra*, we found news reports of fourteen *sui generis* prosecutions in Hawaii and Minnesota. However, we could not find the associated source materials, so none of those actions are included in the compilation. Assuming other states with *sui generis* laws are experiencing similar enforcement volumes, our compilation is likely missing hundreds of such enforcement actions.

*Enforcement Actions Never Brought.* The vast majority of nonconsensual pornography disseminations do not result in enforcement actions, and any compilation of enforcement actions necessarily has selection biases towards the attributes that cause plaintiffs to bring cases.

There are many good reasons why enforcement actions are not brought. On the civil side,<sup>22</sup> victims may not be able to afford to litigate (because they cannot pay the legal fees, the defendants are judgment-proof, or both); it can be difficult to find a competent lawyer; victims may fear further victimization from participating in the litigation, including the Streisand Effect (the unwanted consequence of drawing further attention to private material by trying to suppress the material);<sup>23</sup> or victims may determine for a wide range of reasons that a successful lawsuit will not be worth it.

On the criminal side, law enforcement and prosecutors may not pursue cases for a variety of reasons, including: they may not take violations seriously enough; they may face challenges securing

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<sup>22</sup> See Danielle K. Citron & Mary Anne Franks, *Criminalizing Revenge Porn*, 49 WAKE FOREST L. REV. 345, 358 (2014); Susana Lichter, *Unwanted Exposure: Civil and Criminal Liability for Revenge Porn Hosts and Posters*, HARV. J. L. & TECH. JOLT DIGEST (May 27, 2013), <http://jolt.law.harvard.edu/digest/unwanted-exposure-civil-and-criminal-liability-for-revenge-porn-hosts-and-posters> [<https://perma.cc/32W7-J6FY>]; Jessica Meiselman, 'Our Society's Deep Sexual Dysfunction': Why It's So Hard to Stop Revenge Porn, VICE (Mar. 17, 2017), [https://broadly.vice.com/en\\_us/article/our-societys-deep-sexual-dysfunction-why-its-so-hard-to-stop-revenge-porn](https://broadly.vice.com/en_us/article/our-societys-deep-sexual-dysfunction-why-its-so-hard-to-stop-revenge-porn) [<https://perma.cc/3U44-R24L>].

<sup>23</sup> See, e.g., Justin Parkinson, *The Perils of the Streisand Effect*, BBC (July 31, 2014), <http://www.bbc.com/news/magazine-28562156> [<https://perma.cc/5DHU-A9ZG>].



credible evidence or witnesses; they may feel stymied by the need to fit the prosecution into antiquated or ill-fitting criminal laws; or they may face jurisdictional issues.<sup>24</sup> We found several news reports of terminated nonconsensual pornography dissemination investigations,<sup>25</sup> but we generally excluded these incidents because we lacked original source materials and could not confidently assess why the investigation stopped (public statements may not reflect the actual story).

*What Can We Learn from the Observable Universe?* If we had a truly comprehensive compilation, or if we thought our compilation reflected the actual universe without any distortions, we could use the total number of compiled action as a denominator to generate percentage-based statistics about the compilation, such as the percentage of compiled cases that resulted in a plaintiff win. While we do not know any reason why the compilation skews plaintiff- or defense-favorable, we are also not confident that the compilation proportionately reflects the actual enforcement universe. Therefore, we have chosen to present only absolute, not relative, statistics. We nevertheless think absolute statistics can provide substantial insights. The compilation also provides a helpful complement to individual anecdotes by illustrating repeating pathologies and patterns.

## II. THE COMPILATION TAXONOMY

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<sup>24</sup> Factors that inhibit enforcement may be partially ameliorated, but are not eliminated, by the *sui generis* laws. See, e.g., Avlana K. Eisenberg, *Criminal Infliction of Emotional Distress*, 113 MICH. L. REV. 607, 653 (2015) (criticizing California's *sui generis* law for being too hard for prosecutors to enforce).

<sup>25</sup> See, e.g., Stacy St. Clair, *Accuser 'Devastated' After Blackhawks Quickly Reinstate Prospect in Revenge Porn Case*, CHI. TRIB., Mar. 30, 2016, <http://www.chicagotribune.com/sports/hockey/blackhawks/ct-revenge-porn-accuser-garret-ross-0331-20160330-story.html> [<https://perma.cc/TSP5-VGFH>] (prosecutors dropping a case involving a hockey player's disclosure of an explicit video to a teammate, purportedly for jurisdictional reasons); Michael E. Miller, *Revenge Porn Victim Holly Jacobs "Ruined My Life," Ex Says*, MIAMI NEW TIMES (Oct. 17, 2013), <http://www.miaminewtimes.com/news/revenge-porn-victim-holly-jacobs-ruined-my-life-ex-says-6393654> [<https://perma.cc/WR6P-UAH4>] (prosecutors dropping a prosecution against ex-boyfriend Ryan Seay for lack of evidence that he had disseminated the photos or created a fake email account); cf. *Olsen v. Henderson*, No. 2:12-CV-543 JCM (PAL) (D. Nev. Feb. 27, 2014), <https://www.leagle.com/decision/infdc020140228f16> [<https://perma.cc/26KW-QQ2H>] (prosecutors declining to prosecute a student who borrowed a classmate's cellphone and used it to email nude photos from the cellphone to himself).

We taxonomized the enforcement actions into four categories: offline dissemination, online dissemination, threatened dissemination, and actions against intermediaries.<sup>26</sup>

*Offline Dissemination.* Nonconsensual pornography is typically associated with Internet dissemination, but dissemination can take place offline as well. Indeed, enforcement actions against offline disseminations date back to the 1980s. Appendix A summarizes the six cases we found involving offline dissemination.

*Online Dissemination.*<sup>27</sup> Many online dissemination cases are what most readers would colloquially refer to as “revenge porn.” Indeed, we found numerous cases where an ex-romantic partner disseminates photos or videos over the Internet to harm the victim. Appendix B summarizes the thirty-nine cases we found involving online dissemination.

*Threatened Disseminations.* Threatened disseminations generally look similar to the offline and online dissemination cases—except that because dissemination has not yet taken place, a successful enforcement action can prevent the dissemination from ever occurring. At least twenty-one of these cases involve behavior that might be characterized as “sextortion,”<sup>28</sup> including:

- Seven involving extortion for money.
- Six involving extortion for additional photos/videos.
- Six involving extortion for sexual favors.

Appendix C summarizes the thirty-one cases we found involving threatened dissemination.<sup>29</sup>

*Actions Against Intermediaries.* The first three taxonomy categories are based on the dissemination method. In contrast, the final taxonomy category is based on the defendant’s status as an intermediary. An intermediary does not make the initial decision to

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<sup>26</sup> Each appendix lists the actions roughly chronologically. Many cases had additional extenuating circumstances involving the parties that we omitted to focus the narrative tightly on just dissemination.

<sup>27</sup> We excluded *State v. Zimmerman*, 314 P.3d 850, 2013 WL 6507550 (Haw. Ct. App. Dec. 11, 2013), because it was impossible to isolate the role that nonconsensual pornography played in the sentencing given the multiple other crimes involved in the case.

<sup>28</sup> *What is Sextortion?*, Federal Bureau of Investigation, <https://www.fbi.gov/video-repository/newss-what-is-sextortion/view> [<https://perma.cc/3H4W-SCVW>].

<sup>29</sup> We excluded *Walls v. Klein*, No. 04-12-00615-CV, (Tex. App. Ct. Mar. 13, 2013), because we could not verify that the photos at issue were pornographic.

disseminate nonconsensual pornography, but its publication tools can increase the dissemination's reach.

We felt that intermediary cases should be separated from the other cases for several reasons. First, intermediaries are often more compelling defendants than their uploaders.<sup>30</sup> The actual disseminator may be anonymous or pseudonymous, while an intermediary may be easier to find. The intermediary also may have deeper pockets.<sup>31</sup>

Second, intermediaries can cut off further dissemination on its network.<sup>32</sup> Often, victims eagerly want to stop further dissemination, and intermediaries can provide that remedy with—or without—judicial proceedings. Indeed, several major online services have voluntarily adopted policies to remove nonconsensual pornography.<sup>33</sup>

Third, intermediaries are usually commercial enterprises, such as “revenge porn websites” that charge victims to remove the postings from their databases. Compared to an individual disseminator, the intermediaries’ commerciality increases the number of potential claims and affects how the claim elements might be interpreted.

Finally, intermediaries may qualify for the immunity from liability provided by 47 U.S.C. § 230 (“Section 230”), the law that Congress enacted in 1996 to absolve online publishers from liability for user-supplied materials. Section 230 plays an important role in enforcement actions against intermediaries, though it has not been insurmountable.

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<sup>30</sup> See Mary Anne Franks, *Sexual Harassment 2.0*, 71 MD. L. REV. 655 (2009).

<sup>31</sup> See *id.* at 693–694; Lichter, *supra* note 22.

<sup>32</sup> See Lilian Edwards, *Revenge Porn: Why The Right To Be Forgotten Is The Right Remedy*, THE GUARDIAN (July 28, 2014), <https://www.theguardian.com/technology/2014/jul/29/revenge-porn-right-to-be-forgotten-house-of-lords> [<https://perma.cc/JV6K-95NU>] (“[W]hat victims of revenge porn really want most urgently is a remedy, not a prosecution”).

<sup>33</sup> See, e.g., Megan Geuss, *Twitter Will Ban Revenge Porn And Non-Consensual Nudes*, ARS TECHNICA (Mar. 12, 2015), <https://arstechnica.com/tech-policy/2015/03/twitter-will-ban-revenge-porn-and-nonconsensual-nudes/> [<https://perma.cc/6FDF-KS4E>]; Kashmir Hill, *Google Will Let You Remove Nude Images of Yourself From Search*, FUSION (June 19, 2015), <http://fusion.net/story/153900/google-bans-revenge-porn-too/> [<https://perma.cc/R8J8-3AVJ>]; Antigone Davis, *Using Technology to Protect Intimate Images and Help Build a Safe Community*, FACEBOOK NEWSROOM (Apr. 5, 2017), <https://newsroom.fb.com/news/2017/04/using-technology-to-protect-intimate-images-and-help-build-a-safe-community/> [<https://perma.cc/8TUK-22JK>].

Appendix D summarizes the thirteen cases we found against online intermediaries.<sup>34</sup>

### III. ANALYSIS OF THE COMPILATION

#### A. *Demographics*

*Venerability of the Issues.* Nonconsensual pornography dissemination is often viewed as a recent phenomenon associated with the Internet's growth.<sup>35</sup> No doubt, the Internet increases the number and perniciousness of such disseminations.<sup>36</sup> However, the phenomenon is not "new." The earliest case in our compilation is from 1984. This histogram approximately<sup>37</sup> illustrates the dates for compiled cases:

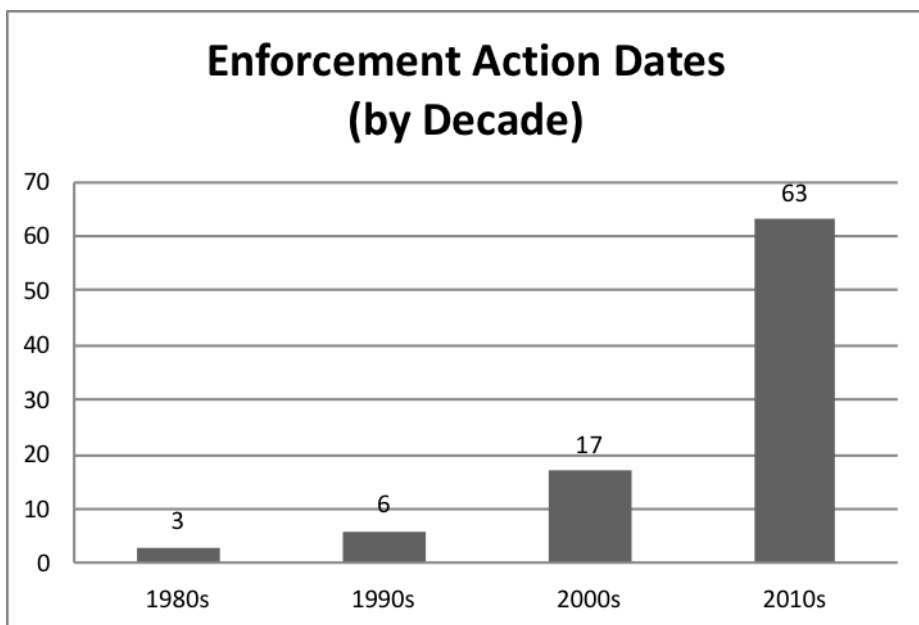
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<sup>34</sup> We decided to include the *Hudson* actions in the offline dissemination category rather than here, even though the plaintiffs sued an offline magazine for publishing the images.

<sup>35</sup> See Jack Simpson, *Revenge Porn: What Is It and How Widespread Is The Problem?*, INDEPENDENT (July 2, 2014), <http://www.independent.co.uk/news/uk/home-news/what-is-revenge-porn-9580251.html> [<https://perma.cc/6NMD-E8NK>].

<sup>36</sup> *Id.*

<sup>37</sup> We generally assigned a case's date by what we considered the most important court ruling in the case. Where the case did not produce a key ruling, we usually dated the case by its complaint. Recall the discussion in Part I about our challenges researching older cases.



*Male Victims.* Consistent with the stereotypes, most of our compiled cases involve male defendants and female victims. However, men are often overshadowed as victims. Men are—and will remain—an important minority segment of the victim community. In at least seven cases in our compilation,<sup>38</sup> men were victims of nonconsensual pornography dissemination.

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<sup>38</sup> See *Farrell v. Narain*, No. 2:05-cv-07244 (C.D. Cal. Oct 5, 2005); *Farrell v. Narain*, No. 2:05-cv-05668 (C.D. Cal. Aug. 3, 2005); *Farrell v. Narain*, No. BC336690, 2005 WL 6522674 (Cal. Super. Ct. 2005); *Colin Farrell Sues Over Sex Tape*, THE SMOKING GUN (July 19, 2005), <http://www.thesmokinggun.com/documents/crime/colin-farrell-sues-over-sex-tape> [https://perma.cc/78VW-KAYF]; *Jersevic v. Kuhl*, No. 00-CV-10113-BC, 2000 U.S. Dist. LEXIS 21760 (E.D. Mich. Mar. 29Sept. 22, 2000); *Jersevic v. Kuhl*, No. 238808, 2003 WL 1558207 (Mich. Ct. App. Mar. 25, 2003); *United States v. Esler*, 531 F. App'x 502 (5th Cir. 2013); *Tharpe v. Lawidjaja*, 8 F.Supp. 3d 743 (W.D. Va. 2014); *Rogers v. Brindle*, 12-1-08807-53 (Ga. Superior Ct.); *Caraccioli v. Facebook, Inc.*, 167 F.Supp.3d 1056 (N.D. Cal. 2016); *Caraccioli v. Facebook, Inc.*, 2017 U.S. App. LEXIS 10040 (9th Cir. June 6, 2017); *State v. Ravi*, 147 A.3d 455 (N.J. App. Div. 2016); see also *supra* note 29 (the *Walls* case); *Woman, 32, Arrested For Distributing Naked Photos Of Her Ex-Husband*, THE SMOKING GUN (Nov. 22, 2016), <http://www.thesmokinggun.com/buster/florida/hide-that-flash-drive-guys-017348> [https://perma.cc/L947-S3RL] (arrest of Eva Gaitan); *Doe v. Ruiz*, BC 640012 (Cal. Super. Ct. filed Nov. 8, 2016), <https://localtvkdv.files.wordpress.com/2016/11/von-miller-lawsuit.pdf> [https://perma.cc/X87S-7MJP].

*Celebrity Victims.* Celebrity cases play a conspicuous role in the compilation.<sup>39</sup> Celebrity-related material can have high financial value if commercialized or used for extortion,<sup>40</sup> and celebrities may experience the Streisand Effect if they bring enforcement actions. This makes celebrities especially vulnerable to stolen pornography. Furthermore, celebrities often have the financial ability to obtain legal representation to bring enforcement actions while most victims cannot afford to do so.

*Parallel Civil/Criminal Enforcement.* At least five incidents involved both civil and criminal enforcement<sup>41</sup> (because we counted

<sup>39</sup> See e.g., *Farrell v. Narain*, No. 2:05-cv-07244 (C.D. Cal. Oct 5, 2005); *Farrell v. Narain*, No. 2:05-cv-05668 (C.D. Cal. Aug. 3, 2005); *Farrell v. Narain*, No. BC336690, 2005 WL 6522674 (Cal. Super. Ct. 2005); *Colin Farrell Sues Over Sex Tape*, THE SMOKING GUN (July 19, 2005), <http://www.thesmokinggun.com/documents/crime/colin-farrell-sues-over-sex-tape> [<https://perma.cc/78VW-KAYF>]; *Miranda v. Guerrero*, 2009 WL 1381250 (S.D. Fla. May 14, 2009); *Leviston v. Jackson*, 980 N.Y.S.2d 716 (Sup. Ct. 2013); *Bollea v. Gawker Media, LLC*, 913 F. Supp. 2d 1325 (M.D. Fla. 2012); *Lee v. Penthouse Int'l*, 1997 WL33384309 (C.D. Cal. Mar. 19, 1997) (order granting summary judgment) (*Tommy Lee and Pamela Andersen case*); see also *Ritchie et al v. World Wide Red Light District et al*, 2006 WL 678840 (E.D. Mich. filed Feb. 21, 2006); *Stapp v. Worldwide Red Light District*, Docket No. 2:06-cv-01570 (C.D. Cal. filed Mar. 14, 2006); *Doe v. World Wide Red Light District*, No. 2006-004056-CA-01 (Fla. Cir. Ct. filed Mar. 2, 2006) (the Scott Stapp/Kid Rock cases). There also have been the wide-scale releases of stolen celebrity photos, such as the “Fapping” and the “Snapping.”

<sup>40</sup> Celebrities and other wealthy individuals are especially vulnerable to the nonconsensual recording of sexual activity followed by an extortionate demand to keep the recording private. See, e.g., *Doe v. Ruiz*, BC 640012 (Cal. Super. Ct. filed Nov. 8, 2016), <https://localtvkdvr.files.wordpress.com/2016/11/von-miller-lawsuit.pdf> [<https://perma.cc/X87S-7MJP>]; *Hubbard v. Azzara*, No. 8:01-cv-1154-T-24 EAJ, 2008 WL 2782828 (M.D. Fla., July 16, 2008); *Rogers v. Brindle*, 12-1-08807-53 (Ga. Superior Ct.); *United States v. Tarlow*, No. 3:15-cr-00239 (N.D. Cal. filed Apr. 30, 2015).

<sup>41</sup> *Azzara, Bollaert, Elam, Kuhl, and Roebuck*. *Hubbard v. Azzara*, No. 8:01-cv-1154-T-24 EAJ, 2008 WL 2782828 (M.D. Fla. July 16, 2008); *United States v. Azzara*, No. 02-1739, 2003 WL 193738 (2d Cir. Jan. 29, 2003); *United States v. Azzara*, No. 04-0809-CR, 2005 WL 1331273 (2d Cir. June 6, 2005); *Azzara v. United States*, 2011 U.S. Dist. LEXIS 122689 (S.D.N.Y. Oct. 20, 2011); *People v. Bollaert*, 248 Cal. App. 4th 699 (2016); *Complaint, Doe v. Bollaert*, No. 2:13-CV-486 (S.D. Ohio May 21, 2013), <http://www.plainsite.org/dockets/download.html?id=32311460&z=ddo41f9e>; *Order, Doe v. Bollaert*, No. 2:13-CV-486 (S.D. Ohio Mar. 18, 2014), <http://www.plainsite.org/dockets/download.html?id=167384616&z=of1b373e>; *U.S. v. Elam*, Docket No. 2:14-cr-00368 (C.D. Cal. Jun 24, 2014); *Complaint, Doe v. Elam*, 2:14-cv-09788-PSG-MAN (C.D. Cal. Dec. 24, 2014); *People v. Kuhl*, No. 203979, 1999 Mich. App. LEXIS 2257 (Mich. Ct. App. Dec. 28, 1999); *Jersevic v. Kuhl*, NoCASE NO. 00-CV-10113-BC, 2000 U.S. Dist. LEXIS 21760 (E.D. Mich. Sept. 22, 2000); *Jersevic v. Kuhl*, No. 238808, 2003 WL 1558207 (Mich. Ct. App. Mar. 25, 2003); *Docket, Roebuck v. Scott*, No. 2012-006627 (Pa. Ct. Com. Pl. complaint filed Aug. 2, 2012),

each action separately, these incidents comprised ten of the eighty-nine compiled actions). It's likely that other cases in the compilation had parallel enforcement actions that we did not identify.

The parallel enforcements prompt some questions, such as: Why did these cases, and not others, have parallel actions? In terms of providing justice for victims, were the parallel actions additive or duplicative? If the civil and criminal cases reached different conclusions, what was the reason?

The parallel civil/criminal enforcement cases would benefit from closer study. They may be able to provide greater insights into the relative pros and cons of civil and criminal actions as ways to remediate nonconsensual pornography dissemination violations.

## B. Claims Analysis

*Diversity of Legal Claims.* As the compilation's taxonomy illustrates, the dissemination of "nonconsensual pornography" involves heterogeneous activities. Not surprisingly, a large number of different laws were litigated in compiled cases. By our count, plaintiffs have succeeded with no less than twenty-six different legal doctrines at least once.<sup>42</sup> A breakdown of the successful legal theories, ordered by the frequency of their success (as far as we could determine):

Doctrine	Cases Where It Succeeded	Comments
"Invasion of Privacy" (11 times)	<i>Bollea, Bruce, Christman Hubbard, Del Mastro, Hoewischer, Hudson, Kid Rock, Leviston, Patel, Peterson, Rogers</i>	It was not always clear what courts meant by "invasion of privacy." At least two of the cases ( <i>Patel</i> and <i>Bollea</i> ) involve intrusion into seclusion

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[http://roam.co.delaware.pa.us/delco/search.do?indexName=docketcase&templateName=case&dq=CASE\\_NUMBER%3A%222012-006627%22](http://roam.co.delaware.pa.us/delco/search.do?indexName=docketcase&templateName=case&dq=CASE_NUMBER%3A%222012-006627%22) [https://perma.cc/CVZ5-99QT].

<sup>42</sup> It might be interesting to compile the causes of action that have been litigated but never successfully. However, we couldn't comprehensively compile the asserted causes of action or accurately determine if those claims pertained to nonconsensual pornography dissemination or other facts.

Doctrine	Cases Where It Succeeded	Comments
Child pornography or child sex exploitation (10 times) <sup>43</sup>	<i>Beckett, Bollaert</i> (the civil case), <i>Browne, Esler, Hutchinson, J.O., Kisling, Schnitker, Shea, Talley</i>	For simplicity, we combined torts and crimes into a single category
Intentional infliction of emotional distress (IIED) (9 times)	<i>Bollea, Del Mastro, Hofstetter, Leviston, Patel, Peterson, Prezioso, Taylor, Thomas</i>	<i>Taylor</i> also succeeded with negligent infliction of emotional distress (NIED). <i>Patel</i> did not get any damages for her IIED claim
Extortion (8 times)	<i>Azzara, Bollaert</i> (the criminal case), <i>Hutson, Kuhl, Meyering, Pauling, Petrovic, Vafaie</i>	
Stalking/Cyberstalking (8 times)	<i>Ackell, Brown, Cavazos, D.C., Franklin, Osinger, Petrovic, Sayer</i>	
Public Disclosure of Private Facts (7 times)	<i>Backlund, Bollea, Bruce, Hofstetter, Patel, Peterson, Taylor</i>	
Identity Theft (5 times)	<i>Bollaert, Kisling, Ledgard, Moore, Sayer</i>	
Sui generis anti-nonconsensual pornography laws (5 times)	<i>Barber, McLellan, Morehead, Parsons, Yarber</i>	As discussed, many enforcements of the <i>sui generis</i> laws are outside the observable universe
Harassment (4 times)	<i>D.C., Kochanowski, Roebuck, Vafaie</i>	
Criminal Threat (3 times)	<i>Azzara, Tarlow, Ybarra</i>	
Assault/Battery (3 times)	<i>Cavazos, Stancl, Vafaie</i>	
Publicity rights (3 times)	<i>Bollaert</i> (the civil case), <i>Bollea, Talley</i>	
Obscenity (2 times)	<i>Hutchinson, Roebuck</i>	

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<sup>43</sup> As we mentioned, we generally excluded child pornography cases, so this category reflects the cases we felt were within the compilation's scope.



Doctrine	Cases Where It Succeeded	Comments
Computer Fraud & Abuse Act (2 times)	<i>Ledgard, Moore</i>	
Lanham Act (2 times)	<i>Kid Rock, Miranda</i>	<i>Miranda</i> involved a false designation of origin. <i>Kid Rock</i> involved trademark infringement.
Negligence (2 times)	<i>Bruce, Vafaie</i>	
Defamation/False Light (2 times)	<i>Backlund, Taylor</i>	
Rape/Attempted Rape (2 times)	<i>Piznarski, Serrano</i>	

We also found one successful assertion of each of the following claims: compelled prostitution (*Dula*), conspiracy (*Wood*), deterring a witness (*Wood*), witness retaliation (*Kushner*), Florida’s “Security of Communications Act” (*Bollea*), fraudulent use of personally identifiable information (*Roller*), unlawful imprisonment (*Piznarski*), and unlawful surveillance (*Piznarski*).

Prosser’s four common law privacy torts<sup>44</sup>—public disclosure of private facts, intrusion into seclusion, false light and publicity rights—play a significant role in the successful enforcement actions. This makes some sense because common law doctrines naturally allow judges to apply them to new facts as justice requires. Thus, the Prosser privacy torts can cover novel anti-social behavior such as nonconsensual pornography dissemination.

Also, IIED cases are typically considered difficult for plaintiffs to win.<sup>45</sup> Over the years, courts have been increasingly exacting about the requirements for a successful claim. Yet, nonconsensual pornography dissemination plaintiffs have had some success with IIED. In light of our compilation’s scope, this makes sense because disseminators often seek to inflict emotional distress by disseminating

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<sup>44</sup> William L. Prosser, *Privacy*, 48 CAL. L. REV. 383 (1960).

<sup>45</sup> See, e.g., Andrew Meerkins, *Distressing Speech After Snyder – What’s Left of IIED?*, 107 NW. U. L. REV. 999 (2013); Sara Ruliffson, *R.I.P. I.I.E.D.: The Supreme Court of Texas Severely Limits The Tort of Intentional Infliction of Emotional Distress*, 58 BAYLOR L. REV. 587 (2006); Russell Fraker, *Reformulating Outrage: A Critical Analysis of the Problematic Tort of IIED*, 61 VAND. L. REV. 983 (2008) (“Despite this general acceptance of the tort, courts routinely assert that IIED is a disfavored cause of action.”).

“revenge” pornography.<sup>46</sup> Indeed, nonconsensual pornography dissemination seems to be a paradigmatic example of IIED.

In contrast, copyright plays less of a role in the compilation than we might have expected. Every photo and video at issue in every compiled case is likely owned by someone under copyright law. While the victims won’t necessarily own those copyrights, many of the compiled cases involved situations where the victims seemed likely to own the copyrights. Furthermore, Section 230 does not immunize copyright claims,<sup>47</sup> making it more fruitful to bring copyright claims against intermediaries than many other types of claims.

Yet, none of the compiled cases involved the victim winning a copyright claim. We can hypothesize with some possible selection biases that might explain a reduced role for copyright litigation,<sup>48</sup> such as the likelihood that copyright takedown notices helped victims remove photos or videos without going to court, the possibility that the Digital Millennium Copyright Act’s safe harbors<sup>49</sup> reduced the exposure of intermediaries, and the likelihood that the victims were not eligible for statutory damages<sup>50</sup> and actual damages were not worth pursuing. Nevertheless, it seems unlikely that nonconsensual pornography dissemination victims have never succeeded on copyright claims, so the paucity of copyright successes may reflect limitations in the compilation methodology.

*The Role of Section 230.* Section 230 has been heavily criticized for its alleged role in enabling nonconsensual pornography

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<sup>46</sup> RESTATEMENT (SECOND) OF TORTS § 46 (1965) (defining liability under IIED to anyone “who by extreme and outrageous conduct intentionally or recklessly causes severe emotional distress”); Citron & Franks, *supra* note 22, at 350–354 (explaining how revenge porn increases the risks of offline stalking and physical attack, anxiety, panic attacks, Anorexia nervosa, depression, inability to find work, and humiliation).

<sup>47</sup> 47 U.S.C. § 230(e)(2) (2012).

<sup>48</sup> Cf. Rebecca Tushnet, *How Many Wrongs Make a Copyright?*, 98 MINN. L. REV. 2346 (2014) (discussing some conceptual problems with over-expansive applications of copyright law to nonconsensual pornography).

<sup>49</sup> 17 U.S.C. § 512 (2012).

<sup>50</sup> Eligibility for statutory damages requires timely registrations. 17 U.S.C. § 504(c) (2012). Most non-professional photographers/videographers do not regularly register copyrights in their works, and copyright registration requires submitting the work to a government agency (the Copyright Office), which conflicts with the victims’ desire to keep the work private.

dissemination.<sup>51</sup> These concerns have some foundation. Unquestionably, Section 230 is a powerful immunity for intermediaries, and has supported defense wins in two cases (*GoDaddy* and *Caraccioli*).

However, Section 230 does not always produce a defense win. For example, in *Barnes*, Section 230 eliminated some of the victim's claims but not all of them. In *Bollaert* (the criminal prosecution), the prosecution overcame a vigorous Section 230 defense. In other cases, such as the *Meyering* and *Moore* cases, Section 230 did not appear to be a factor at all.

Also, some cases did not involve any targetable online intermediary, such as offline disseminations and disseminations by email. In cases without a targetable immunity, Section 230's immunity was irrelevant.

Furthermore, as noted above, several major intermediaries have adopted "house rules" against nonconsensual pornography dissemination, even in circumstances where Section 230 immunizes them from liability.

These and other considerations raise the possibility that Section 230's role in nonconsensual pornography dissemination may not merit the substantial ire directed towards it. Furthermore, Section 230's immunity plays an important role in a wide range of online content, of which nonconsensual pornography is just one of many content categories. Any Section 230 reform may not materially improve the nonconsensual pornography dissemination issues and could substantially harm other essential aspects of the Internet.<sup>52</sup>

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<sup>51</sup> Hundreds of articles have advanced this argument. For a small sampling, see for example, Lichter, *supra* note 22; Casey Martinez, *An Argument For States To Outlaw 'Revenge Porn' And For Congress To Amend 47 U.S.C. § 230: How Our Current Laws Do Little To Protect Victims*, 14 U. PITT. J. TECH. L. & POL'Y 236 (2014); Allison Tungate, *Bare Necessities: The Argument for a 'Revenge Porn' Exception in Section 230 Immunity*, 23 INFO. & COMM'C'N TECH. L. 172, <http://www.tandfonline.com/doi/full/10.1080/13600834.2014.916936>.

<sup>52</sup> See Eric Goldman, *Unregulating Online Harassment*, 87 DENV. U. L. REV. ONLINE 59 (2010); Eric Goldman, *Sex Trafficking Exceptions to Section 230*, SANTA CLARA UNIV. LEGAL STUDIES RESEARCH PAPER No. 13-71 (Sept. 20, 2017), <https://ssrn.com/abstract=3038632>; Eric Goldman, *Balancing Section 230 and Anti-Sex Trafficking Initiatives* (Dec. 1, 2017), <https://ssrn.com/abstract=3079193>.

### C. Remedies Analysis

*Tort Damages.* We identified at least eighteen cases where the court awarded damages that were not overturned on appeal. Additional cases resulted in a settlement with payment to the victim, but we did not include them in the table below. We did not include attorneys' fees except where noted, but some of these cases also had awards of fees and costs in addition to damages. Some of the damages were awarded in default judgments, where the amounts might have received more scrutiny in contested cases. We enumerate the court's initial award; subsequent proceedings may have adjusted the numbers.

The following table enumerates the cases:

Case	Regular Damages	Punitive Damages	Initial Award <sup>53</sup>
<i>Bollea</i>	\$115,000,000	\$25,000,000	\$140,000,000
<i>Leviston</i>	\$5,000,000	\$2,000,000	\$7,000,000
<i>Backlund</i>	\$500,320	\$500,000	\$1,000,320
<i>Conklin</i>	\$1,000,000		\$1,000,000
<i>Talley</i> (2 defendants)	\$600,000	\$300,000	\$900,000
<i>Del Mastro</i>	\$531,000		\$531,000
<i>Taylor</i>	\$425,000		\$425,000
<i>Thomas</i>	\$300,000	\$125,000	\$425,000
<i>Bollaert</i> (civil case)	\$310,000	\$75,000	\$385,000
<i>Patel</i>	\$345,000		\$345,000
<i>Prezioso</i>	\$300,000		\$300,000
<i>Bruce</i>	\$250,000		\$250,000
<i>Hudson</i>	\$225,000		\$225,000
<i>Hofstetter</i>	\$155,000		\$155,000
<i>Hoewischer</i>	\$50,000	\$100,000	\$150,000
<i>Moldofsky</i> (2 plaintiffs)	\$25,500	\$30,000	\$55,500
<i>Grossman</i>	\$25,000		\$25,000
<i>D.C.</i>	\$14,891 <sup>54</sup>		\$14,891
<i>Vafaie</i>	Indeterminate		
Total	\$124,056,711	\$28,130,000	\$153,186,711

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<sup>53</sup> Although we tried to ensure that the damages amounts related solely to the nonconsensual pornography dissemination, these numbers may include damages for other claims.

<sup>54</sup> This total includes attorneys' fees.

The bottom-line totals are skewed by *Bollea* and *Leviston*, which together account for over ninety-six percent of the aggregate damages.

The totals do not necessarily reflect the amounts plaintiffs actually received. For example, defendants may have defaulted, or the parties may have subsequently settled for less (or more) than the awarded damages.

The number of punitive damages awards is noteworthy. Punitive damages are rarely awarded,<sup>55</sup> but our compilation suggests that punitive damage awards are fairly common in nonconsensual pornography dissemination cases. This reinforces that such cases routinely involve egregious and abusive behavior by defendants.

*Consequences of Bankruptcy.* Tort remedies for nonconsensual pornography dissemination are sometimes considered inadequate because defendants may be judgment-proof, plus defendants might avoid large damages awards by declaring bankruptcy.<sup>56</sup> Although these concerns are valid, we found two cases (*Grossman* and *Hoewischer*) where bankruptcy courts held that the defendants could not discharge nonconsensual pornography damages awards in bankruptcy. Furthermore, in two other high-profile cases (*Leviston* and *Bollea*), the plaintiffs were paid millions of dollars even though the defendants declared bankruptcy. These results suggest that nonconsensual pornography dissemination defendants cannot reliably use bankruptcy to avoid damages.

*Criminal Sentences.* As Representative Speier's remarks illustrate, there is a widespread view that there are not enough criminal laws against nonconsensual pornography, and the criminal enforcement system does not take these crimes seriously.<sup>57</sup> Our compilation includes at least 30 defendants who have received jail sentences for nonconsensual pornography dissemination, plus another seven defendants who were convicted with probation, a diversion agreement, or a sentence that we could not determine. The following

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<sup>55</sup> For example, a 2011 study by the Bureau of Justice Statistics showed that "[p]unitive damages were awarded in 700 (5%) of the 14,359 trials where plaintiffs prevailed." Bureau Of Justice Statistics, *Punitive Damages In Civil Trials* (June 7, 2011), <https://www.bjs.gov/index.cfm?ty=tp&tid=45111> [<https://perma.cc/69G9-9TBMM>].

<sup>56</sup> See Citron & Franks, *supra* note 22, at 357–59.

<sup>57</sup> Danielle K. Citron, *Law's Expressive Value in Combating Cyber Gender Harassment*, 108 MICH. L. REV. 373, 403 (2009).

table enumerates these actions by the initially imposed sentence, which may have subsequently changed:<sup>58</sup>

<b>Case</b>	<b>Incarceration</b>	<b>Other Punishments (where known)</b>	<b>Notes</b>
<i>Hutchinson</i>	Life		Child victim
<i>Shea</i>	396 months		Child victim
<i>Kisling</i>	240 months (and 180 months concurrent)	Life term of supervised release	Child victim
<i>Bollaert</i>	216 months	\$15,000 restitution; \$10,000 fine	
<i>Yarber</i>	180 months (84 months minimum)		
<i>Stancl</i>	180 months	13 years supervised release, no contact order, sex offender registration	Child victim
<i>Schnitker</i>	168 months		Child victim
<i>Azzara</i>	168 months	3 years supervised release, \$300 special assessment	
<i>Ybarra</i>	148 months		
<i>Dula</i>	120 months	\$10,000 fine	
<i>Beckett</i>	120 months	Lifetime supervised release	Child victim
<i>Petrovic</i>	96 months		
<i>Esler</i>	70 months	20 years supervised release, \$37,750 restitution	Child victim
<i>Sayer</i>	60 months		
<i>Osinger</i>	46 months		
<i>Meyering</i>	36 months		
<i>Brown</i>	36 months		
<i>Ackell</i>	33 months	3 years supervised release, \$100 special assessment	
<i>Moore</i>	30 months (Moore), 25 months	Evans: \$2,000 fine, 20 hours of community service. Both: \$147.50	

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<sup>58</sup> Some sentences were later reduced, some defendants did not actually serve the full sentence, and some defendants did not spend time in jail at all.

Case	Incarceration	Other Punishments (where known)	Notes
	(Evens)	restitution	
<i>Ledgard</i>	25 months	3 years supervised release	
<i>Kushner</i>	24 months	2 years supervised release, \$4,000 fine, \$100 special assessment	
<i>Cavazos</i>	24 months (and 237 days concurrent)		
<i>Kochanowski</i>	12 months		
<i>Piznarski</i>	12-36 months (and other shorter concurrent)	Protective order, Level 1 sex offender	
<i>J.O.</i>	6 months	3 years conditional release, no contact with family	Juvenile defendant
<i>Barber</i>	6 months	5 years	
<i>Kuhl</i>	6 months	2 years	We could not determine co-defendant Hakes' sentence
<i>Roebuck</i>	3-23 months	3 years probation, sex offender registration, \$660 restitution	
<i>Pauling</i>	3 months	No contact with victim; domestic violence treatment program; costs of \$2,861.32	
<i>Roller</i>		3 years probation	Probation revoked for recidivism
<i>Butler</i>		3 years probation	
<i>Tarlow</i>		Diversion agreement	
<i>Franklin</i>		Indeterminate	
<i>Hutson</i>		Indeterminate	
<i>Morehead</i>		Indeterminate	
<i>Parsons</i>		Indeterminate	
<i>Wood</i>		Indeterminate	

Unsurprisingly, many of the cases with the longest sentences involve child victims, but the table includes some substantial sentences in cases without child victims. We enumerate four such cases that have sentences of ten years or longer. Bollaert's sentence particularly stands out because it highlights the significant exposure faced by intermediaries if they are not protected by Section 230's immunity.

*Injunctions.* We compiled at least fourteen actions that produced some form of injunction,<sup>59</sup> such as a restraining order, protective order, or substantive restriction on disseminating materials.

#### D. Policy Analysis

Ultimately, we aspire to answer the question: what package of legal regulation would optimally address the problems with nonconsensual pornography dissemination? To answer that question, we might run three comparisons:

*Condition #1 (the baseline):* existing laws excluding any *sui generis* nonconsensual pornography laws. Though we included some cases predicated on the *sui generis* laws, our compilation basically models this condition.

*Condition #2 (the status quo):* Condition #1 plus the state *sui generis* laws. Although not every state has adopted a *sui generis* law, this is essentially the status quo.

*Condition #3 (expanded regulation):* Condition #2 plus a new federal *sui generis* law, such as the ENOUGH Act.

In an ideal world, we could model all three conditions side-by-side and compare the results before picking the best one. In the real world, we do not get to run rigorous A/B tests like this. Still, this article provides some data to inform condition #1. For example, the compilation shows that dozens of existing laws (excluding the *sui generis* laws) apply to nonconsensual pornography dissemination, dozens of people have gone to jail based on existing laws, and significant civil damages have been awarded.

We know less about the consequences of the *sui generis* laws. For example, we found reports indicating the *sui generis* laws have led to

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<sup>59</sup> Backlund (injunction against defamation), Christman Hubbard (restriction on dissemination), Clarke (protective order), Conklin, D.C., Hofstetter, Kid Rock, L.Z. (restraining order), McGowan (restraining order), Miranda, Osno (restraining order), S.B. (restraining order), Talley, and Williams.



at least ten prosecutions in Hawaii<sup>60</sup> and four prosecutions in Minnesota.<sup>61</sup> Extrapolating these fourteen prosecutions to other states that have adopted *sui generis* laws, the number of prosecutions under the *sui generis* laws likely already exceeds—possibly by a lot—the number of actions in our compilation. Projecting into the future, the number of *sui generis* enforcements may dominate all other bases for nonconsensual pornography dissemination enforcement.

Unfortunately, significant enforcement of the state *sui generis* laws does not confirm that the enforcement activity is beneficial. Perhaps more perpetrators are being brought to justice more efficiently; but perhaps law enforcement is spending more time on investigations and prosecutions that are not meritorious, or perhaps the new laws do not meaningfully change the results that would have been achieved in Condition #1.<sup>62</sup> The *sui generis* laws and their enforcement also raise substantial First Amendment concerns<sup>63</sup> and may have an unintentional negative disparate impact on non-majority subcommunities.<sup>64</sup> Clearly, we need more data and transparency about usage of the *sui generis* laws so we can evaluate them better.

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<sup>60</sup> Lynn Kawano, *Former UH Athlete Charged Under Rarely-Used 'Revenge Porn' Law*, KFVE (Oct. 27, 2016), <http://www.k5thehometeam.com/story/33502882/man-accused-of-kidnapping-sex-assault-also-charged-under-revenge-porn-law> [<https://perma.cc/3BLM-PJZ8>] (saying there have been nine prosecutions pursuant to Hawaii's revenge porn law, and discussing the prosecution of a tenth defendant, Joseph Uglietto).

<sup>61</sup> Sarah Horner, *Anoka Man Charged Under New 'Revenge Porn' Law For Posting Nudes of Ex, Charges Say*, TWIN CITIES PIONEER PRESS (Feb. 28, 2017, 7:05 PM), <http://www.twincities.com/2017/02/28/anoka-man-posted-nude-photos-of-his-ex-on-fake-facebook-page-charges-say/> [<https://perma.cc/STU6-7BGK>].

<sup>62</sup> See Eric Goldman, *California's New Law Shows It's Not Easy To Regulate Revenge Porn*, TECH. & MKTG. L. BLOG (Oct. 16, 2013), [http://blog.ericgoldman.org/archives/2013/10/californias\\_new\\_1.htm](http://blog.ericgoldman.org/archives/2013/10/californias_new_1.htm) [<https://perma.cc/7SUA-LPL4>].

<sup>63</sup> For example, Arizona's first *sui generis* law was not enforceable due to constitutionality concerns. See *Antigone Books, LLC v. Horne*, No. 2:14-cv-02100-PHX-SRB (D. Ariz. July 10, 2015) (Az. final decree). Rhode Island's governor vetoed a *sui generis* law for the same reason. Katherine Gregg, *Governor Says She Worries About Its Broad Sweep and 'Chilling Effect on Free Speech'*, PROVIDENCE J. (June 21, 2016), <http://www.providencejournal.com/news/20160621/raimondo-vetoes-revenge-porn-bill> [<https://perma.cc/JFH7-W7NV>] (citing concerns that the law would reach the news media and works of art depicting the human body).

<sup>64</sup> Cf. AMY A. HASINOFF, *SEXTING PANIC* (2015) (discussing the disproportionate enforcement of anti-sexting laws against marginalized groups); ROGER N. LANCASTER, *SEX*

As for condition #3, we wonder what unresolved problems in conditions #1 and #2 would require federal regulatory intervention, especially given the wide range of doctrinal tools that have been successfully deployed. We also wonder if additional criminalization is the best way to redress the underlying cultural and social roots of the problem.<sup>65</sup>

#### IV. CONCLUSION

Many victims of nonconsensual pornography dissemination have horrific stories, including the stories behind many of the cases compiled in this article. It is essential that we not lose sight of victims' personal stories. At the same time, basing regulatory solutions on individual narratives can lead to suboptimal outcomes.

To supplement the individual narratives and probe the validity of some stereotypes, this article aggregates data from actual litigation involving nonconsensual pornography dissemination. Ideally, this article will contribute to efforts to gather more empirical data about the nonconsensual pornography dissemination phenomenon and how the law is handling it. That effort should help regulators make well-informed choices.

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PANIC AND THE PUNITIVE STATE (2011) (discussing the disproportionate effects of sex offender laws on gay men).

<sup>65</sup> As Prof. Edwards explained: "Long term revenge porn . . . is not a criminal law problem but a social problem. We need, by education in schools and homes, by peer pressure and, most immediately, by swift and resolute response from hosting social networks, to show that this behavior is unacceptable." Edwards, *supra* note 32. See also Meiselman, *supra* note 22 ("[R]evenge porn...is a conduct problem, it is a criminal problem, and unfortunately it is a cultural problem").

## APPENDIX A

## OFFLINE DISSEMINATION

Case Name	Key Facts	Outcome
<i>Hudson v. Montcalm Pub. Corp.</i> <sup>66</sup>	Gordon and the victim were married. After they split, Gordon submitted a nude photo of her to Montcalm for publication, along with a forged publication consent form. Montcalm published the photo in its magazine.	The invasion of privacy claim against Gordon succeeded, and the plaintiffs were awarded \$225,000. <sup>67</sup> Despite the bogus consent form, Montcalm avoided liability based on a valid release signed after the photo was published.
<i>In re Thomas</i> <sup>68</sup>	Ex-boyfriend mailed sexually explicit consensually-created photos to victim's fiancé.	The court found IIED and awarded \$300,000 in actual damages and \$125,000 in punitive damages.
<i>State v. Pauling</i> <sup>69</sup>	Ex-boyfriend mailed sexually explicit photos to at least 20 of victim's co-workers, friends, and neighbors after threatening to do so to get a debt paid.	The lower court convicted defendant of extortion and sentenced him to 90 days in county jail on two counts—the sentences ran concurrently. He was barred from contacting the victim and ordered to attend a domestic violence treatment program. He was also ordered to pay \$2,861.32 in costs. On appeal, the Washington Supreme Court agreed that the statute was overbroad, but upheld the conviction

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<sup>66</sup> *Hudson v. Montcalm Pub. Corp.*, 190 Ga. App. 629 (1989), 379 S.E.2d 572 (Ga.App. 1989).

<sup>67</sup> *Hudson v. Windholz*, 202 Ga. App. 882 (1992), 416 S.E.2d 120 (Ga.App 1992).

<sup>68</sup> *In re Thomas*, 254 B.R. 879 (D.S.C. 1999).

<sup>69</sup> *State v. Pauling*, 69 P.3d 331 (Wash. 2003); *Pauling v. McKenna*, No. Co4-2203C, 2005 WL 3132213 (W.D. Wash. Nov. 22, 2005).

Case Name	Key Facts	Outcome
		because the defendant threatened the victim to extract payment. A federal district court denied his habeas corpus petition.
<i>United States v. Kushner</i> <sup>70</sup>	The government investigated the defendant's conduct. To retaliate against a cooperating witness, the defendant had a prostitute seduce the witness and surreptitiously record their sexual activity. The defendant then had the recording sent to the witness' wife.	The defendant was charged with witness retaliation (18 U.S.C. § 1513(e)). The defendant entered into a plea agreement. He was sentenced to two years in prison, two years of supervised release, a \$4,000 fine, and a \$100 special assessment.
<i>McGowan v. O'Rourke</i> <sup>71</sup>	Defendant mailed sexually explicit photos to victim's sister and threatened to send photos to her co-workers and son.	Lewdness and stalking charges were dismissed, but lower court issued a Final Restraining Order based on harassment. The appeals court affirmed.
<i>Del Mastro v. Grimado</i> <sup>72</sup>	Ex-boyfriend disseminated sexually explicit photos to victim's family, friends, and business clients.	The lower court found defendant guilty of IIED and invasion of privacy, and awarded over \$531,000 in damages. The appeals court affirmed. The defendant allegedly avoided payment by fraudulently transferring assets, and the lower court found the victim's subsequent suit over the asset transfer barred by the statute of limitations. The appeals court

<sup>70</sup> *United States v. Kushner*, No. 2:04-cr-00580 (D.N.J. Aug. 18, 2004); *United States v. Kushner*, No. 2:04-mj-06120 (D.N.J. July 12, 2004).

<sup>71</sup> *McGowan v. O'Rourke*, 391 N.J. Super. 502, 918 A.2d 716 (App. Div. 2007).

<sup>72</sup> *Del Mastro v. Grimado*, 2010 N.J. Super. Unpub. LEXIS 2315 (Ch. Div. Mar. 8, 2010); *Del Mastro v. Grimado*, No. A-1433-11T4, 2013 N.J. Super. Unpub. LEXIS 2204 (App. Div. Sept. 5, 2013).

Case Name	Key Facts	Outcome
		reversed and remanded.

## APPENDIX B

## ONLINE DISSEMINATION

Case Name	Key Facts	Outcome
<i>People v. Kochanowski</i> <sup>73</sup>	Ex-boyfriend helped to create a website with “suggestive” photos of the victim and included her contact information.	Defendant was convicted of aggravated harassment in the second degree (N.Y. Penal Law § 240.30). He was sentenced to one year in prison.
<i>Osno v. Klein</i> <sup>74</sup>	The parties had an intimate relationship. Plaintiff sought restraining order after the defendant told the plaintiff that he had posted sexually explicit videos of her on the Internet.	The court issued a restraining order against the defendant under the Prevention of Domestic Violence Act (N.J.S.A. § 2C:25-17 to 35). The appeals court affirmed.
<i>Peterson v. Moldofsky</i> <sup>75</sup>	The parties had an intimate relationship, during which the defendant took explicit photos of the victim having sex with other people. After they ‘had a falling out,’ the defendant emailed explicit photos of the victim to the victim’s	The victim and her mother claimed IIED, invasion of privacy, intrusion upon seclusion, and public disclosure of private facts. The court dismissed the intrusion into seclusion claim on summary judgment. The other claims proceeded to a jury. The jury found for the plaintiffs and awarded the victim actual damages of \$18,000 and punitive damages of \$25,000, and further

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<sup>73</sup> *People v. Kochanowski*, 719 N.Y.S.2d 461 (2d Dep’t. 2000).

<sup>74</sup> *Osno v. Klein*, No. A-1040-06T2, 2007 N.J. Super. Unpub. LEXIS 115 (App. Div. July 10, 2007).

<sup>75</sup> *Peterson v. Moldofsky*, No. 07-2603-EFM, 2009 WL 3126229 (D. Kan. Sept. 29, 2009). See Kashmir Hill, *Ex Must Pay Piper Peterson and Her Mom \$55,500 for E-Mailing Group Sex Photos*, FORBES: THE NOT-SO PRIVATE PARTS BLOG (Nov. 10, 2009), <http://www.forbes.com/sites/kashmirhill/2009/11/10/piper-peterson-and-mother-awarded-55000-for-group-sex-photos> [<https://perma.cc/AFN4-SQ9E>].

Case Name	Key Facts	Outcome
	family members, current boyfriend, and coworkers.	awarded the victim's mother actual damages of \$7,500 and punitive damages of \$5,000.
<i>Miranda v. Guerrero</i> <sup>76</sup>	The defendant took photos of the victim intended solely for publication in <i>Playboy</i> magazine. The <i>Playboy</i> publication opportunity did not materialize. The defendant then threatened to publish the photos on the Internet if the victim did not pay her \$70,000. When the victim refused, the defendant set up a website pretending to be the victim's official website and posted multiple nude photos.	Based on her Lanham Act false designation of origin claim (15 U.S.C. § 1125(a)), the court issued an injunction against the website, including an injunction on "[p]ublishing, printing, displaying or otherwise publicly using any image or photograph of Plaintiff."
<i>Roller v. State</i> <sup>77</sup>	Ex-boyfriend created a fake MySpace profile in victim's name and posted explicit photos of her taken during their relationship.	Defendant was convicted of fraudulent use and possession of identifying information (Tex. Penal Code § 32.51) and placed on three years' probation. The court revoked the probation when it was discovered he had posted more explicit photos to <a href="http://www.oneclickchicks.com">www.oneclickchicks.com</a> . The appeals court affirmed.
<i>Taylor v. Franko</i> <sup>78</sup>	Ex-boyfriend disseminated sexually explicit	The victim sued for public disclosure of private facts, defamation, NIED and IIED. The

<sup>76</sup> *Miranda v. Guerrero*, No. 08-22326-CIV, 2009 WL 1381250 (S.D. Fla. May 14, 2009).

<sup>77</sup> *Roller v. State*, No. 13-09-00175-CR, 2010 Tex. App. LEXIS 5522 (July 15, 2010).

<sup>78</sup> *Taylor v. Franko*, No. 09-00002 JMS/RLP, 2011 WL 2746714 (D. Haw. June 12, 2011).

Case Name	Key Facts	Outcome
	photos (given to him by the victim) on Internet sites, including Craigslist, along with the victim's personal information and solicitations for sex.	defendant defaulted. The judge awarded damages of \$425,000.
<i>State v. Roebuck</i> <sup>79</sup>	The parties dated, and the defendant made videos of them having sex. After they broke up, he posted one of the videos online.	Defendant pleaded guilty to selling obscene/sexual materials and to harassment. He was sentenced to 3-23 months in jail, with a minimum of twelve consecutive weekends with electronic monitoring during the week, followed by three years of probation. Defendant also had to attend sex offender classes and pay \$660 in restitution for victim's therapy bills.
<i>State v. Parsons</i> <sup>80</sup>	While dating, the parties exchanged nude photos with the understanding that the photos were not to be shared with others. After they broke up, the defendant threatened to disseminate the photos to the victim's employer, which he ultimately did.	The defendant was charged with third-degree invasion of privacy under New Jersey's revenge porn law (N.J. Stat. § 2C:14-9). The trial court denied a motion to dismiss and the defendant entered a plea. The appeals court affirmed.
<i>State v. Franklin</i> <sup>81</sup>	The defendant posted sexually explicit	A jury convicted the defendant of stalking, cyberstalking, and

<sup>79</sup> Facts from

<http://roam.co.delaware.pa.us/delco/search.do?indexName=delcoimages&lq=EventEntryID%3A3466680> [<https://perma.cc/7BK5-EZEQ>]. See also case cited *infra* note 82.

<sup>80</sup> *State v. Parsons*, No. A-3856-10T3, 2011 N.J. Super. Unpub. LEXIS 2972 (Super. Ct. App. Div. Dec. 8, 2011).

<sup>81</sup> *State v. Franklin*, No. 64033-0-I, 2012 Wash. App. LEXIS 451 (Wash. Ct. App. Mar. 5, 2012).



Case Name	Key Facts	Outcome
	photos of the victim on Craigslist with her contact information.	perjury. The appeals court affirmed.
<i>Roebuck v. Scott</i> <sup>82</sup>	Same facts as <i>State v. Roebuck</i> .	The victim sued for invasion of privacy, NIED, IIED, and negligence. The case settled.
<i>United States v. Ledgard</i> <sup>83</sup>	The parties dated. After they broke up, the defendant engaged in a campaign to “destroy” the victim’s life—which included emailing nude photos to the victim’s father, the admissions department of a university where the victim had applied, and the victim’s friends.	The district court convicted the defendant of several Computer Fraud & Abuse Act counts (18 U.S.C. § 1030). The victim’s severe emotional distress provided support for the CFAA conviction. The court explained: “[I]t is hard to imagine something more emotionally traumatic and devastating to a young woman living with her parents, with a traditional cultural background, then finding out that private pornographic photos of her engaging in sex acts with someone she had loved and trusted were sent by him to her father, as well as numerous other people she knew.” <sup>84</sup> The defendant was also convicted of aggravated identify theft. The appeals court affirmed. He was sentenced to twenty-five months in prison plus three years of

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<sup>82</sup> *Roebuck v. Scott*, No. 2012-006627 (Pa. Ct. Com. Pl. filed Aug. 2, 2012), [http://roam.co.delaware.pa.us/delco/search.do?indexName=docketcase&templateName=case&lq=CASE\\_NUMBER%3A%222012-006627%22](http://roam.co.delaware.pa.us/delco/search.do?indexName=docketcase&templateName=case&lq=CASE_NUMBER%3A%222012-006627%22) [https://perma.cc/CVZ5-99QT]. See also, *Jilted Boyfriend Arrested for X-Rated Upload*, THE SMOKING GUN (Nov. 16, 2011), <http://www.thesmokinggun.com/documents/ex-posts-explicit-video-765319> [https://perma.cc/8YAV-5KMZ].

<sup>83</sup> *United States v. Ledgard*, No. CR 08-00982 (B) DDP, 2012 U.S. Dist. LEXIS 130204 (C.D. Cal. Sept. 12, 2012); *United States v. Ledgard*, 583 F. App’x 654 (9th Cir. 2014); *United States v. Ledgard*, No. 3:15-cr-07127 (S.D. Cal. Oct. 6, 2015); *Ledgard v. United States*, No. 2:15-cv-08080 (C.D. Cal. Oct. 14, 2015).

<sup>84</sup> *United States v. Ledgard*, No. CR 08-00982 (B) DDP, 2012 U.S. Dist. LEXIS 130204 at \*47 (C.D. Cal. Sept. 12, 2012).

Case Name	Key Facts	Outcome
<i>Doe v. Hofstetter</i> <sup>85</sup>	The plaintiffs are married. The defendant published two blogs containing “intimate” photos of Jane Doe plus false statements about the plaintiffs’ marriage and defendant’s relationship with Jane Doe. The defendant also created two fake Twitter accounts in Jane Doe’s name that included the photos, and emailed the photos to both plaintiff-victims.	supervised release. The plaintiff-victims asserted numerous claims, including ECPA (18 U.S.C. § 2510), CFAA (18 U.S.C. § 1030), SCA (18 U.S.C. § 2701), IIED, intrusion into seclusion, public disclosure of private facts, stalking (C.R.S. § 18-3-602) and harassment (C.R.S. § 18-9-111). The defendant defaulted. The court granted judgment for the IIED and public disclosure of private facts claims, awarded the plaintiffs damages of \$155,000, and issued an injunction that included no contact with the plaintiffs, no further posting of photos about them, deletion of the photos, and no impersonation of them.
<i>United States v. Petrovic</i> <sup>86</sup>	The parties dated, married, and then divorced. During their relationship, the parties created sexually explicit material, both with and without the victim’s consent. After the victim ended the relationship, the defendant threatened to disseminate the material. The defendant carried out his threat, launching	After a trial, the defendant was convicted of 4 counts of interstate stalking (18 U.S.C. § 2261A(2)(A)) and 2 counts of interstate extortionate threats (18 U.S.C. § 875(d)). The court sentenced him to 96 months in prison. The appeals court affirmed.

<sup>85</sup> *Doe v. Hofstetter*, No. 11–CV–02209–DME–MJW, 2012 WL 2319052 (D. Colo. June 13, 2012); *Doe v. Hofstetter*, No. 11–CV–02209–DME–MJW, 2012 WL 3398316 (D. Colo. Aug. 14, 2012).

<sup>86</sup> *United States v. Petrovic*, 701 F.3d 849 (8th Cir. 2012); *Petrovic v. United States*, No. 4:14CV334 HEA, 2015 WL 5853178 (E.D. Mo. Oct. 7, 2015).

Case Name	Key Facts	Outcome
	a public website containing sexually explicit material and promoting it to the victim's friends, family, co-workers, and neighbors. He also mailed photos to the victim's office and home, her boss, and her family members. At one point, the defendant offered to shut down the website if the victim gave him some personal property plus \$100,000.	
<i>Jacobs v. Seay</i> <sup>87</sup>	The parties dated. During their relationship, the complaint alleges Seay "took, obtained or otherwise appropriated" pornographic images of the plaintiff. After they broke up, the complaint alleges Seay publicly disseminated pornographic videos and photos of the plaintiff.	Plaintiff sued Seay and various online websites for invasion of privacy, public disclosure of private facts and IIED. The court denied Seay's motion to dismiss. <sup>88</sup> The case settled. <sup>89</sup>

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<sup>87</sup> *Jacobs v. Seay*, No. 2013-13626-CA-02 (Fla. Cir. Ct. filed Apr. 13, 2013), <https://www.scribd.com/document/138909420/revenge-porn-complaint-holly-jacobs-vs-ryan-seay> [<https://perma.cc/EMX3-CPPQ>].

<sup>88</sup> *Jacobs v. Seay*, No. 2013-13626-CA-02 (Fla. Cir. Ct. Aug. 25, 2014), <http://digitalcommons.law.scu.edu/cgi/viewcontent.cgi?article=2415&context=historical> [<https://perma.cc/9X57-Q35B>].

<sup>89</sup> Confirmed by an email from defense counsel dated February 10, 2017 (on file with Eric Goldman).

Case Name	Key Facts	Outcome
<i>State v. McLellan</i> <sup>90</sup>	While dating, the parties created nude videos of the victim. After they broke up, the victim found the video was posted multiple websites. <sup>91</sup>	The state charged the defendant with video voyeurism (I.C. § 18-6609(2)(b)). The lower court found that the state failed to show the defendant obtained the videos with intent to degrade the victim, so it dismissed the case. The appeals court affirmed.
<i>Doe v. Bruce</i> <sup>92</sup>	While dating defendant Bruce, the victim shared confidential photos. After they broke up, Bruce began dating co-defendant Rodil. Rodil uploaded the victim’s photos to a fake Facebook profile that she created in the victim’s name. Many of the victim’s friends, family, and work colleagues saw the photos when they were added to the fake account.	The victim sued for invasion of privacy, negligence, IIED, NIED, and false impersonation (Cal. Penal Code § 528.5). The jury found Bruce and Rodil guilty of invasion of privacy and negligence, and found Rodil guilty of publicly disclosing private facts. The IIED, NIED and impersonation claims failed. The jury awarded \$250,000 in damages.
<i>Tharpe v. Lawidjaja</i> <sup>93</sup>	The parties entered into a contract for a photo shoot that would help the	The plaintiff sued for fraud, IIED, tortious interference with contract, and defamation. The judge denied the defendant’s

<sup>90</sup> State v. McLellan, 154 Idaho 77, 294 P.3d 303 (Ct. App. 2013).

<sup>91</sup> *Id.*

<sup>92</sup> Although the case’s public record contains the plaintiff’s actual name, we use a “Doe” appellation consistent with her attorney’s publicity of the ruling. See Karl S. Kronenberger, *Firm Obtains Landmark \$250,000 Civil Verdict in Revenge Porn Case*, KRONENBERGER ROSENFELD (Feb. 19, 2014), <https://www.krinternetlaw.com/news/article-detail/firm-obtains-landmark-250000-civil-verdict-in-revenge-porn-case> [<https://perma.cc/5F28-658G>]. The key facts are allegations from Brief for Petitioner, Doe v. Bruce, No. 112CV2333490 (Cal. App. Dep’t Super. Ct. Jan. 31, 2014). See also Doe v. Bruce, No. 112CV2333490 (Cal. App. Dep’t Super. Ct. Feb. 18, 2014).

<sup>93</sup> Tharpe v. Lawidjaja, 8 F. Supp. 3d 743 (W.D. Va. 2014).

Case Name	Key Facts	Outcome
	plaintiff's aspiring modeling career. Outside the agreement's terms, the defendant took nude photos of the plaintiff, but assured the plaintiff that the photos would not be released. The parties' relationship broke down, and the defendant posted thousands of the plaintiff's nude photos online.	summary judgment motion because the facts sufficiently alleged the defendant (1) fraudulently induced the plaintiff into posing nude by falsely promising the photos would not be revealed, and (2) interfered with the defendant's profession by disseminating the photos. The court said the defendant's harms may include the following: being fired, passed over for a promotion, denied a pay raise and put on a leave of absence; as well as emotional distress due to treatment for panic attacks and anxiety. The court also found that a reasonable fact-finder could determine that the defendant defamed the plaintiff by editing the photos and calling the defendant a porn star. The parties apparently settled the lawsuit. <sup>94</sup>
<i>Leviston v. Jackson</i> <sup>95</sup>	The victim made a consensual sex recording with Murray and claimed the parties agreed to keep it private. Murray allegedly gave the recording to defendant (better	The victim sued for defamation (which she later voluntarily withdrew), privacy rights violations and IIED. The jury awarded the plaintiff \$5 million in damages (split evenly between the privacy and IIED claims), plus \$2 million in punitive damages. <sup>96</sup> The victim agreed to

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<sup>94</sup> Peter Vieth, *Soccer Coach Settles Case Against Photographer*, VA. LAWYERS WEEKLY (May 30, 2014), <http://valawyersweekly.com/2014/05/30/soccer-coach-settles-case-against-photographer> [<https://perma.cc/UKY3-EYMZ>]. The parties had additional disputes after the settlement agreement, but the case apparently has been dormant since October 2014.

<sup>95</sup> *Leviston v. Jackson*, No. 102449/10 (N.Y. Sup. Ct. Dec. 3, 2013) (denying Jackson's motion for summary judgment).

<sup>96</sup> See, e.g., Motion for Summary Judgment of Defendant, *Leviston v. Jackson*, No. 102449/10 (N.Y. Sup. Ct. 2015); Barbara Ross, *50 Cent Wants Judge to Lower the \$7M in Damages He Owes in Sex Tape Lawsuit*, N.Y. DAILY NEWS (Jan 6, 2016), <http://www.nydailynews.com/new-york/50-cent-7m-penalty-reduced-sex-tape-case->

Case Name	Key Facts	Outcome
	known as rapper 50 Cent). 50 Cent had a public feud with Ross, who fathered a child with the victim. 50 Cent edited the video to, among other things, obscure Murray’s face but not the victim’s. 50 Cent says he published a video “trailer” but didn’t release the complete edited video publicly. Instead, someone else published the full video.	accept \$6 million after 50 Cent declared bankruptcy. <sup>97</sup> 50 Cent subsequently sued his litigation counsel for malpractice, seeking \$32 million in damages. <sup>98</sup>
<i>United States v. Sayer</i> <sup>99</sup>	The defendant and victim dated. After they broke up, the defendant stalked and harassed her. Photos depicting the defendant and victim having sex were posted to multiple pornography websites, and several included the victim’s name and contact info. The defendant	The defendant was convicted of cyber-stalking (18 U.S.C. § 2261A(2)(A)) and identity theft (18 U.S.C. § 1028(a)(7)), and sentenced to a statutory maximum of sixty months’ imprisonment. The defendant appealed the cyber-stalking conviction on First Amendment and overbreadth grounds, and requested a downward sentencing departure. The appeals court affirmed the district court.

article-1.2487959 [https://perma.cc/U9AQ-LHVP]; Mary Emily O’Hara, *Judge Rules 50 Cent Must Pay Revenge-Porn Victim \$7 Million*, DAILY DOT (July 25, 2015, 8:32 AM), <http://www.dailydot.com/lifestyle/50-cent-lawsuit-revenge-porn-victim-wins/> [https://perma.cc/8438-3FW] .

<sup>97</sup> Stephen Singer, *Judge: 50 Cent Worth \$20 Million In Assets*, HARTFORD COURANT (May 18, 2016), <http://www.courant.com/news/connecticut/hc-50-cent-bankruptcy-20160518-story.html> [https://perma.cc/EVL3-8ZPE].

<sup>98</sup> Jackson v. Reed Smith LLP, No. 15-21233 (D. Conn. filed Jan. 27, 2017), <http://pdfserver.amlaw.com/ca/JacksonSuit.pdf>.

<sup>99</sup> United States v. Sayer, 748 F.3d 425 (1st Cir. 2014).

Case Name	Key Facts	Outcome
	also posted sexually explicit pictures of the victim on fake Facebook and MySpace accounts created in her name.	
<i>United States v. Osinger</i> <sup>100</sup>	The defendant and victim dated. After their relationship ended, the defendant created a Facebook page that displayed nude photos of her, and emailed additional photos to her work colleagues.	The defendant was convicted of cyber-stalking (18 U.S.C. § 2261A) and sentenced to 46 months' imprisonment. The appeals court rejected invalidity and vagueness challenges to the statute and rejected a downward sentencing departure, thus affirming the district court.
<i>Brown v. State</i> <sup>101</sup>	The defendant and victim dated. After their relationship ended, the defendant disseminated nude photos and videos to the victim's Facebook friends and landlord.	The trial court issued a protective order that the defendant violated. The defendant pled guilty to a reduced charge of Class D felony stalking (Ind. Code § 35-45-10-5) and was sentenced to the maximum sentence of three years. The appeals court affirmed.
<i>People v. Barber</i> <sup>102</sup>	The defendant posted nude photos of his girlfriend to his Twitter account and sent the photos to the girlfriend's employer and sister without authorization (although he claims the victim authorized the disseminations).	The defendant was prosecuted for aggravated harassment in the second degree (N.Y. Penal Law § 240.30(1)(a)), disseminating an unlawful surveillance image in the second degree (N.Y. Penal Law § 250.55), and publicly displaying offensive sexual material (N.Y. Penal Law § 245.11(a)). The court dismissed all the charges. The harassment charge failed because the tweets were not a

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<sup>100</sup> *United States v. Osinger*, 753 F.3d 939 (9th Cir. 2014).

<sup>101</sup> *Brown v. State*, 15 N.E.3d 687 (Ind. Ct. App. 2014), *transfer denied*; *Brown v. State*, 17 N.E.3d 932 (Ind. Ct. App. 2014).

<sup>102</sup> *People v. Barber*, 992 N.Y.S.2d 159 (N.Y. Crim. Ct. 2014).

Case Name	Key Facts	Outcome
		communication to the victim and did not encourage others to contact the victim. The unlawful dissemination charge failed because the complaint was factually insufficient. For example, it did not explain how the pictures were obtained. The public display charge failed because posting an image on Twitter and sending an image to individuals were private acts, not a public display. Moreover, the state did not sufficiently show the requisite prurient interest in the nude photos.
<i>Keaton v. Hannum</i> <sup>103</sup>	After they broke up, the ex-boyfriend (a lawyer) created a blog about the victim that included sexually explicit photos and sent the photos to her friends and family.	The state dismissed criminal charges against the ex-boyfriend (without prejudice) “based on personal privacy concerns raised by” the victim. The ex-boyfriend sued the police for allegedly violating his civil rights. The court dismissed his lawsuit because the police had probable cause to arrest him and charge him with stalking. Separately, the Indiana State Bar disbarred the ex-boyfriend in part for his conduct towards the victim.
<i>United States v. Elam</i> <sup>104</sup>	The victim sent intimate photos and videos to her boyfriend with the understanding that	Charges were filed for stalking, aggravated identity theft, and unauthorized access to a computer. However, the government dismissed the case, <sup>105</sup> saying it did

<sup>103</sup> *Keaton v. Hannum*, No. 1:12-CV-00641-SEB, 2014 WL 941352 (S.D. Ind. Mar. 11, 2014); *In the Matter of R. Mark Keaton*, 29 N.E.3d 103 (Ind. 2015).

<sup>104</sup> *United States v. Elam*, No. 2:14-cr-00368 (C.D. Cal. Jun 24, 2014).

<sup>105</sup> Matthew Goldstein, *Law Firm Finds Project to Fight ‘Revenge Porn’*, N.Y. TIMES DEALBOOK (Jan. 29, 2015), <http://dealbook.nytimes.com/2015/01/29/law-firm-finds-project-to-fight-revenge-porn> [https://perma.cc/Y35E-NM9E].



Case Name	Key Facts	Outcome
	they would remain private. After they broke up, the defendant allegedly created a fake dating profile for the victim using suggestive photos and disseminated at least one sex video to multiple pornography websites. The defendant also allegedly posted explicit material to Tumblr, and distributed videos by impersonating individuals in the victim's social circle. The defendant also allegedly disseminated the victim's contact information publicly.	not think it could meet its burden of proof at trial. <sup>106</sup>
<i>Doe v. Elam</i> <sup>107</sup>	Same facts as <i>United States v. Elam</i> .	The victim sued for copyright infringement, online impersonation with intent to cause harm, intrusion, IIED, negligence, and NIED. <sup>108</sup> This case was stayed pending resolution of Elam's criminal prosecution and remains active as of July 27, 2017.

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<sup>106</sup> Matthew Goldstein, In 'Revenge Porn' Case, Criminal Court Decision May Affect Lawsuit, N.Y. TIMES (Apr. 1, 2016), <http://www.nytimes.com/2016/04/02/business/dealbook/in-revenge-porn-case-criminal-court-decision-may-affect-lawsuit.html> [https://perma.cc/Z9CW-8SKM].

<sup>107</sup> Complaint, *Doe v. Elam*, No. 2:14-cv-09788-PSG-MAN (C.D. Cal. Dec. 24, 2014).

<sup>108</sup> *Id.*

Case Name	Key Facts	Outcome
<i>In re Grossman</i> <sup>109</sup>	The victim and defendant created a consensual sex recording while dating with the understanding that it would be kept private. After they broke up, the defendant posted the recording to a pornographic website.	The victim sued for privacy violations and IIED. The defendant declared bankruptcy and then made an offer of judgment of \$25,000, which the plaintiff accepted. The bankruptcy court held that the \$25,000 may not be dischargeable in bankruptcy because the victim adequately alleged that the defendant acted maliciously/willfully.
<i>United States v. Kisling</i> <sup>110</sup>	Defendant posed online as a teenage girl and enticed a minor to send nude photos of herself. The defendant then hacked into the victim's Facebook account and uploaded the photos. The defendant repeated his actions two years later when he posted the photos on a Facebook page that he created using a stolen identification.	The defendant pled guilty to identity theft and distribution, possession, and receipt of child pornography. The defendant received concurrent sentences of 240 months and 180 months.
<i>Crapps v. State</i> <sup>111</sup>	The defendant logged into his ex-girlfriend's Instagram account and posted nude photos of her.	The trial court convicted the defendant of willful and knowing access to a computer or computer system without authorization (Fla. Stat. Ann. § 815.06(1)(a)). The appeals court partially reversed because the state had

<sup>109</sup> *In re Grossman*, 538 B.R. 34 (Bankr. E.D. Cal. 2015).

<sup>110</sup> *United States v. Kisling*, No. 1:14CR0157, 2015 WL 5055512 (N.D. Ohio Aug. 25, 2015).

<sup>111</sup> *Crapps v. State*, 180 So. 3d 1125 (Fla. Dist. Ct. App. 2015).

Case Name	Key Facts	Outcome
		not proved that the defendant accessed a specific computer or computer system. The appeals court remanded to give the state the opportunity to establish the crime's elements. We did not find subsequent reported proceedings.
<i>State v. Yarber</i> <sup>112</sup>	The defendant and victim dated on-and-off. During a period of reconciliation, the victim sent nude images of herself to Yarber. After their relationship ended, the defendant posted nude photos to Craigslist to solicit sex, putatively in the victim's name. These postings caused strangers seeking sex to contact the victim.	The defendant was convicted of video voyeurism (Idaho Code Ann. § 18-6609(2)) <sup>113</sup> and sentenced to fifteen years, with a minimum confinement of seven years. The appeals court affirmed, holding that the defendant had the requisite scienter because he knew the victim created the images to arouse the defendant sexually.
<i>Patel v. Hussain</i> <sup>114</sup>	While they dated, the victim shared explicit photos with the defendant, and the defendant recorded sexual videos without her consent. After they broke up, the defendant harassed the plaintiff, including emailing	A jury ruled in the victim's favor on claims for IIED, intrusion on seclusion, public disclosure of private facts, and defamation; and awarded her \$500,000 for past and future mental anguish damages, past and future reputation damages, and exemplary damages. The appeals court reversed the defamation ruling and the IIED

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<sup>112</sup> *State v. Yarber*, No. 42418, 2015 WL 9259888 (Idaho Ct. App. Dec. 18, 2015).

<sup>113</sup> Despite the crime's name, it applies to the intentional dissemination of intimate images without consent.

<sup>114</sup> *Patel v. Hussain*, 485 S.W.3d 153 (Tex. App. 2016).

Case Name	Key Facts	Outcome
	the victim’s photos to her mother and posting the videos to a pornography website. The victim said the videos harmed her standing in the Muslim community.	damages award. This reduced the damage award to \$345,000. <sup>115</sup>
<i>Bollea v. Gawker</i> <sup>116</sup>	The victim, known as Hulk Hogan, had sex with Clem, his friend’s wife. <sup>117</sup> The victim claims he did not know he was being recorded. <sup>118</sup> The recording made its way to a Gawker	The victim first sued for copyright infringement but was denied a TRO and later dismissed the federal case. <sup>120</sup> The victim refiled in state court, alleging privacy violations (public disclosure of private facts and intrusion into seclusion), publicity rights violations, IIED and Florida’s

<sup>115</sup> *Id.* at 184; Michelle Casady, *Texas Appeals Court Reduces Revenge Porn Damages*, LAW360 (Jan. 21, 2016), <http://www.law360.com/articles/749307/texas-appeals-court-reduces-revenge-porn-damages> [<https://perma.cc/JT6M-GPYY>].

<sup>116</sup> See *Bollea v. Gawker Media, LLC*, 913 F. Supp. 2d 1325 (M.D. Fla. 2012). See also, Eriq Gardner, *Hulk Hogan, Gawker Make Opening Statements in Sex Tape Trial*, HOLLYWOOD REPORTER (Mar. 7, 2016), <http://www.hollywoodreporter.com/thr-esq/hulk-hogan-gawker-make-opening-873097> [<https://perma.cc/N4ST-WKEF>]; Eriq Gardner, *Hulk Hogan Testifies That Gawker’s Sex Tape “Turned My World Upside Down,”* HOLLYWOOD REPORTER (Mar. 7, 2016), <http://www.hollywoodreporter.com/thr-esq/hulk-hogan-testifies-gawkers-sex-873160> [<https://perma.cc/9H85-6ZAL>]; Eriq Gardner, *Hulk Hogan Grilled About Sex-Filled TMZ, Howard Stern Interviews at Gawker Trial*, HOLLYWOOD REPORTER (Mar. 8, 2016), <http://www.hollywoodreporter.com/thr-esq/hulk-hogan-grilled-sex-filled-873435> [<https://perma.cc/GF6W-2Z88>]; Eriq Gardner, *At Trial, ‘Gawker’ Staffers Explain Hulk Hogan Sex Tape Post*, HOLLYWOOD REPORTER (Mar. 9, 2016), <http://www.hollywoodreporter.com/thr-esq/at-trial-gawker-staffers-explain-873817> [<https://perma.cc/PH4N-ESK6>]; Eriq Gardner, *Hulk Hogan Offers up Expert Testifying to Gawker’s Increased Value from Sex Tape*, HOLLYWOOD REPORTER (Mar. 11, 2016), <http://www.hollywoodreporter.com/thr-esq/hulk-hogan-offers-up-expert-874531> [<https://perma.cc/CK5Z-DW9E>]; Eriq Gardner, *Judge Upholds Hulk Hogan’s \$140 Million Trial Victory Against Gawker*, HOLLYWOOD REPORTER (May 25, 2016), <http://www.hollywoodreporter.com/thr-esq/judge-upholds-hulk-hogans-140-897301> [<https://perma.cc/8PFU-RL3K>].

<sup>117</sup> Tom Kludt, *Why Hulk Hogan Settles for \$5,000 with the Man Who Made His Sex Tape*, CNN MONEY (Mar. 12, 2016), <http://money.cnn.com/2016/03/12/media/hulk-hogan-gawker-settlement/> [<https://perma.cc/7HCH-YXT2>].

<sup>118</sup> *Bollea v. Gawker Media, LLC*, 913 F. Supp. 2d 1325 (M.D. Fla. 2012).

Case Name	Key Facts	Outcome
	editor, who published two minutes of the thirty-minute recording, including ten seconds of sexual activity. <sup>119</sup>	Security of Communications Act. <sup>121</sup> A jury ruled for the victim on all claims and awarded \$115 million in compensatory damages and \$25 million in punitive damages. <sup>122</sup> The jury's damage award contributed to Gawker declaring Chapter 11 bankruptcy <sup>123</sup> and its subsequent sale to Univision. <sup>124</sup> The parties settled for \$31 million plus a share of the company's sales proceeds. <sup>125</sup>

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<sup>120</sup> *Bollea*, 913 F. Supp. 2d at 1325.

<sup>119</sup> *Id.* at 1325; Gawker, *Hulk Hogan in Settlement Talks Over Privacy Case*: WSJ, REUTERS (Aug. 7, 2016), <http://finance.yahoo.com/news/gawker-hulk-hogan-settlement-talks-over-privacy-case-023354185--finance.html>. [<https://perma.cc/33Z4-R8Y2>]; Lloyd Grove, *A.J. Daulerio Doesn't Regret Child Sex Quip at Hogan-Gawker Trial*, THE DAILY BEAST (Mar. 23, 2015), <http://www.thedailybeast.com/articles/2016/03/23/a-j-daulerio-doesn-t-regret-child-sex-quip-at-hogan-gawker-trial.html> [<https://perma.cc/5E5G-NQG5>]; Nathan Malone, *Everything You Need to Know About the Hulk Hogan Sex-Tape Lawsuit That Could Cost Gawker Over \$115 Million*, BUSINESS INSIDER (Mar. 20, 2016), <http://www.businessinsider.com/hulk-hogan-versus-gawker-lawsuit-explained-2016-3> [<https://perma.cc/7G9W-J8Z9>].

<sup>121</sup> See First Amended Complaint and Demand for Jury Trial, *Bollea v. Gawker*, No. 12012447-CI-011 (Fla. 6th Cir. Ct. Dec. 28, 2012).

<sup>122</sup> Steven Perlberg, *Hulk Hogan Awarded Additional \$25 Million in Gawker Sex-Tape Case*, WALL ST. J. (Mar. 21, 2016), <http://www.wsj.com/articles/hulk-hogan-awarded-additional-25-million-in-gawker-case-1458598102> [<https://perma.cc/FZV8-YVG8>].

<sup>123</sup> Lloyd Grove, *Gawker Declared Bankruptcy to Stop Hulk Hogan from Taking It Over*, DAILY BEAST (June 10, 2016), <http://www.thedailybeast.com/articles/2016/06/10/gawker-declared-bankruptcy-to-stop-hulk-hogan-from-taking-it-over.html> [<https://perma.cc/HMB4-CPH6>]; Peter Sterne, *Gawker Media Files for Bankruptcy*, POLITICO (June 10, 2016), <http://www.politico.com/media/story/2016/06/gawker-files-for-bankruptcy-to-protect-assets-from-hogan-004593> [<https://perma.cc/M6HU-TAEB>].

<sup>124</sup> Lukas I. Alpert & Tom Corrigan, *Gawker.com will Shut Down Next Week as Univision Acquires Rest of Company*, WALL ST. J. (Aug. 18, 2016), <http://www.wsj.com/articles/univision-plans-to-shut-down-gawker-com-1471539451> [<https://perma.cc/A96P-XARF>].

<sup>125</sup> Merritt Kennedy, *Hulk Hogan Reaches Settlement With Gawker Worth Over \$31 Million*, NPR (Nov. 2, 2016), <http://www.npr.org/sections/thetwo->

Case Name	Key Facts	Outcome
		During the trial, it was revealed that Silicon Valley billionaire Peter Thiel funded Bollea's lawsuit (and other lawsuits against Gawker) as retribution for Gawker's outing of Thiel in 2007. <sup>126</sup>
<i>Hoewischer v. White (In re White)</i> <sup>127</sup>	The defendant posted nude photos of his ex-girlfriend on a revenge porn website along with her contact information. The victim received comments about her body and solicitations for sex, which made her depressed, shy, and fearful for her safety.	The victim's IIED claim failed because it was not clear that the emotional distress was serious and of such a nature that no reasonable person could be expected to endure it. However, the court granted a default judgment for the privacy invasion claim and awarded \$50,000 compensatory damages, \$100,000 punitive damages and \$1,123 for attorney fees. Subsequently, the defendant filed for bankruptcy. The Bankruptcy Court held the judgment was not dischargeable because the defendant's conduct was willful and malicious.
<i>In re J.O.</i> <sup>128</sup>	The defendant, a minor, received sexually explicit images from two high school classmates. Instead of deleting the images as they requested, the	The defendant was found to have violated Cal. Penal Code § 311.11(a) (possessing material depicting a minor engaged in sexual conduct) and Cal. Penal Code § 311.3 (misdemeanor sexual exploitation of a child). The juvenile court declared the

way/2016/11/02/500389355/hulk-hogan-reaches-settlement-with-gawker-worth-over-31-million [https://perma.cc/5V5X-LT4Y].

<sup>126</sup> Andrew Ross Sorkin, *Peter Thiel, Tech Billionaire, Reveals Secret War With Gawker*, N.Y. TIMES (May 25, 2016), [www.nytimes.com/2016/05/26/business/dealbook/peter-thiel-tech-billionaire-reveals-secret-war-with-gawker.html](http://www.nytimes.com/2016/05/26/business/dealbook/peter-thiel-tech-billionaire-reveals-secret-war-with-gawker.html) [http://perma.cc/26BW-KESV].

<sup>127</sup> *Hoewischer v. White (In re White)*, 551 B.R. 814 (Bankr. S.D. Ohio 2016).

<sup>128</sup> *In re J.O.*, No. A145223, 2016 Cal. App. Unpub. LEXIS 1620 (Mar. 4, 2016).

Case Name	Key Facts	Outcome
	defendant circulated the images to others.	defendant a ward of the court, committed him to a county institution for six months (plus an additional ninety-day conditional release period), and imposed probation conditions that included having no contact with the victims or their families. The appeals court slightly modified the no-contact probation condition and otherwise affirmed.
<i>L.Z. v. K.Q.</i> <sup>129</sup>	The defendant and victim dated. After they broke up, the defendant logged into the victim's Snapchat account and disseminated a sexually explicit video of her to some of her Snapchat contacts.	The judge issued a final restraining order (FRO) against defendant. The appeals court affirmed, holding that a single act can constitute domestic violence for FRO purposes and that harassment can include sending images of plaintiff engaged in private sexual acts.
<i>United States v. Fitzhugh</i> <sup>130</sup>	Defendant allegedly used a fake alias to communicate with the minor victim via a messaging app; convinced her to send him nude photos of herself; and then posted the photos to a foreign website.	Defendant was charged with producing child pornography (18 U.S.C. § 2255), online enticement and coercion of a minor (18 U.S.C. § 2422(b)), and receipt/distribution of child pornography (18 U.S.C. § 2252A(a)(2)). The judge approved the defendant's detention.
<i>State v. Ravi</i> <sup>131</sup>	Defendant used his laptop's webcam to surreptitiously	A jury convicted the defendant of invasion of privacy, bias intimidation, attempted invasion

<sup>129</sup> *L.Z. v. K.Q.*, No. A-4776-14T3, 2016 N.J. Super. LEXIS 1653 (App. Div. July 18, 2016).

<sup>130</sup> *United States v. Fitzhugh*, No. 16-mj-30364, 2016 U.S. Dist. LEXIS 122953 (E.D. Mich. Sept. 12, 2016).

<sup>131</sup> *State v. Ravi*, 147 A.3d 455 (N.J. Super. Ct. App. Div. 2016).

Case Name	Key Facts	Outcome
	broadcast (to several other people) his roommate having sexual relations with another man on multiple occasions.	of privacy, tampering with physical evidence, hindering apprehension or prosecution, witness tampering, and tampering with physical evidence under New Jersey’s criminal code (N.J.S.A. § 2C:14). The trial court sentenced the defendant to three years of probation, conditioned upon serving thirty days at a correctional center, along with community service, counseling, and paying an assessment of \$10,000. On appeal, the court vacated the charges of bias intimidation and hindering apprehension. The remaining charges were tainted by improper evidence, so the appeals court remanded for a retrial.
<i>Somerville v. White</i> <sup>132</sup>	An ex-boyfriend sued the victim over an alleged debt. The victim counterclaimed that the ex-boyfriend harassed and threatened her to coerce payment. She said the ex-boyfriend accessed her email and forwarded sexually explicit photos to her email contacts and uploaded the photos to her social media account.	The court awarded the victim \$500 compensatory damages and \$15,000 punitive damages pursuant to Georgia’s revenge porn law (Ga. Code Ann. § 16-11-90). <sup>133</sup> The appeals court reversed the damages award because the penal statute did not support a civil cause of action.

<sup>132</sup> *Somerville v. White*, 787 S.E.2d 350 (Ga. Ct. App. 2016).

<sup>133</sup> GA. CODE ANN. § 16-11-90 (2014) (criminalizing the transmission of photography or video depicting nudity or sexually explicit conduct of an adult without his or her consent).



Case Name	Key Facts	Outcome
<i>Morehead v. Commonwealth</i> <sup>134</sup>	The victim's ex-husband posted intimate images of the victim on a pornography website. The ex-husband then emailed a link to the victim and further posted the link on the victim's employer's Facebook page.	The trial court convicted the defendant of unlawful dissemination of images of another person (Va. Code Ann. § 18.2-386.2). The appeals court affirmed.
<i>Barber v. Vance</i> <sup>135</sup>	Barber and Vance had an intimate relationship. They consensually made pornographic videos. After they broke up, Barber uploaded several videos to adult websites. He claimed he produced the videos with Vance for commercial purposes.	A state prosecutor charged Barber with violating Oregon's new revenge porn crime (Or. Rev. Stat. § 163.472). Barber sought a TRO against the prosecution, claiming it violated his First Amendment and copyright ownership rights. The court rejected the request on <i>Younger</i> abstention grounds. At trial, Barber was convicted of five counts and sentenced to six months in jail plus five years of probation. <sup>136</sup>

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<sup>134</sup> *Morehead v. Commonwealth*, 784 S.E.2d 301 (Va. Ct. App. 2016).

<sup>135</sup> *Barber v. Vance*, No. 3:16-CV-2105-AC, 2016 WL 6647936 (D. Or. Nov. 9, 2016).

<sup>136</sup> Press Release, Washington County (Or.) Sheriff's Office, Man First to be Prosecuted Under New Oregon Law (Dec. 1, 2016), <http://www.co.washington.or.us/News/SONews/upload/PR161201-Man-First-to-be-Prosecuted-Under-New-Oregon-Law.pdf> [https://perma.cc/64AN-97GW].

APPENDIX C

THREATENED DISTRIBUTION

Case Name	Key Facts	Outcome
<i>Dula v. State</i> <sup>137</sup>	While they dated, the victim posed for explicit photos for the defendant. The defendant then forced the victim to engage in prostitution by threatening to disseminate the photos to the victim’s contacts.	The defendant was convicted of compelling prostitution under Tex. Penal Code § 43.05 and sentenced to ten years in prison plus a \$10,000 fine. The appeals court affirmed.
<i>United States v. Hutson</i> <sup>138</sup>	Defendant sent ex-girlfriend a letter demanding \$10,000 to satisfy an alleged “debt” owed to him. He threatened to send explicit photos to her parents, relatives, and associates if she did not pay.	Defendant was convicted of extortion under 18 U.S.C. § 876. The appeals court affirmed.
<i>Vafaie v. Owens</i> <sup>139</sup>	The parties had business and personal relationships. To resolve a debt dispute, defendant threatened to disseminate sexually explicit photos.	Lower court granted summary judgment to the victim on negligence per se, extortion, assault, malicious harassment, and civil conspiracy claims. The jury found for defendant on outrageous conduct and IIED claims. The appeals court reversed and remanded on outrageous conduct, IIED and civil conspiracy claims and

<sup>137</sup> *Dula v. State*, 679 S.W.2d 601 (Tex. App. 1984).

<sup>138</sup> *United States v. Hutson*, 843 F.2d 1232 (9th Cir. 1988).

<sup>139</sup> *Vafaie v. Owens*, C. A. No. 01A01-9510-CV-00472, 1996 Tenn. App. LEXIS 557 (Sept. 6, 1996).

Case Name	Key Facts	Outcome
<i>Boschette v. Bach</i> <sup>140</sup>	Defendant stole explicit videotapes of the plaintiffs' son and threatened to publicize the videos if the plaintiffs did not pay the defendant.	affirmed the rest. Plaintiffs sued for extortion under Puerto Rico Laws Annotated (33 P.R. Laws Ann. § 4828), but the case was dismissed because the criminal code did not create a civil cause of action. The defendant counterclaimed for malicious prosecution and abuse of process, but this was dismissed because criminal proceedings had not been brought against him.
<i>D.C. v. F.R.</i> <sup>141</sup>	The parties dated. The defendant persuaded the victim to pose for explicit photos. The defendant then threatened to send the photos to the plaintiff's parents if she did not agree to create additional photos. The defendant also harassed the plaintiff.	The court found the defendant violated New Jersey Statutes Annotated (NJSA) § 2C:12-10 (stalking) and NJSA § 2C:33-4 (harassment). The court awarded \$14,891 compensatory damages and attorneys' fees plus \$5,875 punitive damages. The court also issued a restraining order. The appeals court affirmed the findings but vacated and remanded the punitive damages and modified the restraining order. We could not determine what happened on remand.
<i>People v. Kuhl</i> <sup>142</sup>	Christina Hakes and the victim dated. Hakes thought the victim gave her a venereal disease, so she took videos of them having sex from	Hakes and Kuhl were convicted of extortion under Michigan Compiled Laws (MCL) § 750.213 and Michigan Statutes Annotated (MSA) § 28.410 and conspiracy to commit extortion under MCL § 750.157a and MSA

<sup>140</sup> *Boschette v. Bach*, 916 F. Supp. 91 (D. P.R. 1996); *Boschette v. Bach*, 925 F. Supp. 100 (D. P.R. 1996).

<sup>141</sup> *D.C. v. F.R.*, 670 A.2d 51 (N.J. Super. Ct. App. Div. 1996).

<sup>142</sup> *People v. Kuhl*, No. 203979, 1999 Mich. App. LEXIS 2257 (Dec. 28, 1999).

Case Name	Key Facts	Outcome
	the victim's home without permission. Hakes gave the videos to Scott Kuhl, who created a fourteen-minute compilation. Hakes then threatened to share the compilation with the victim's family members and political colleagues if the victim did not provide her with health insurance coverage, \$100,000, and more.	§ 28.354(1). Kuhl was sentenced to 180 days in jail and two years of probation. We were not able to determine Hakes' sentence.
<i>Jersevic v. Kuhl</i> <sup>143</sup>	Same facts as <i>People v. Kuhl</i> .	The victim sued Carol Kuhl in state court for extortion/blackmail/threats and public disclosure of private facts, and conversion. The trial court granted summary disposition to the defendant. The appellate court reversed and remanded. We could not determine what happened on remand. The court dismissed a federal lawsuit against Scott Kuhl for civil RICO.
<i>Prezioso v. Thomas</i> <sup>144</sup>	Hardy and Thomas dated. During their relationship, Thomas took intimate photos of Hardy. Hardy and Thomas broke up.	The plaintiff sued for IIED and invasion of privacy. The court ruled for the plaintiff on the IIED claim and awarded \$300,000 compensatory damages and \$125,000 punitive

<sup>143</sup> *Jersevic v. Kuhl*, CASE NO. 00-CV-10113-BC, 2000 U.S. Dist. LEXIS 21760 (E.D. Mich. Sept. 22, 2000); *Jersevic v. Kuhl*, No. 238808, 2003 WL 1558207 (Mich. Ct. App. Mar. 25, 2003).

<sup>144</sup> *In re Thomas*, 211 B.R. 838 (Bankr. D. S.C. 1997); *In re Thomas*, 254 B.R. 879 (D. S.C. 1999); *Prezioso v. Thomas*, No. 99-1675, 2000 U.S. App. LEXIS 7740 (4th Cir. Apr. 25, 2000).

Case Name	Key Facts	Outcome
	Later, Prezioso and Hardy got engaged. Thomas sent Prezioso explicit photos of Hardy and demanded payment to keep the photos private.	damages. The appeals court affirmed the compensatory damages but certified a question about the punitive damages to the South Carolina Supreme Court. The parties then voluntarily dismissed the case.
<i>Christman Hubbard v. Azzara</i> <sup>145</sup>	While dating, the parties created consensual sex recordings. After they broke up, a court ordered the ex-boyfriend to destroy all copies of the recordings. The ex-boyfriend registered a domain name using the victim's name, created a website, described sexually explicit videos that were coming, and promised to promote them widely. He also told the victim's husband about the website and his plans.	Based on the victim's invasion of privacy claim, the lower court enjoined the ex-boyfriend from disseminating the recordings. Subsequent proceedings did not disturb the injunction.
<i>Azzara v. United States</i> <sup>146</sup>	This involves the same facts as the <i>Christman Hubbard</i> case above. The defendant wrote a letter to his ex-girlfriend's father demanding \$3 million or he would	The defendant was convicted of mailing threatening communications (18 U.S.C. § 876) and extortion per the Hobbs Act (18 U.S.C. § 1951). He was sentenced to 168 months' imprisonment, three years of supervised release, and

<sup>145</sup> *Hubbard v. Azzara*, No. 8:01-cv-1154-T-24 EAJ, 2008 WL 2782828 (M.D. Fla. July 16, 2008). Permanent injunction issued September 20, 2002 and filed April 3, 2003.

<sup>146</sup> *United States v. Azzara*, No. 02-1739, 2003 WL 193738 (2d Cir. Jan. 29, 2003); *United States v. Azzara*, No. 04-0809-CR, 2005 WL 1331273 (2d Cir. June 6, 2005); *Azzara v. United States*, 2011 U.S. Dist. LEXIS 122689 (S.D.N.Y. Oct. 20, 2011).

Case Name	Key Facts	Outcome
	disseminate a sexually explicit video of her.	a \$300 special assessment. On appeal, the Second Circuit affirmed the conviction, but remanded for resentencing. The district court reiterated its original sentence, which the Second Circuit then affirmed.
<i>Farrell v. Narain</i> <sup>147</sup>	The parties made a videotape of them having sex with the alleged understanding that both parties would own the tape and would keep it private. Narain then allegedly worked with other co-defendants to commercially exploit the video.	The victim sued for breach of contract, invasion of privacy, violation of California's common law and statutory rights of publicity (Civil Code § 3344), and unfair competition and unfair business practices. The case apparently settled.
<i>People v. Wood</i> <sup>148</sup>	The victim hired the defendant to take intimate photos of her. During the photo shoot, the victim claimed that the defendant sexually assaulted her. After the victim reported the incident to the police, the defendant told the victim to drop the report or he would release the photos.	The jury convicted the defendant of sexual battery (Cal. Penal Code (CPC) § 243.4(e)(1) and (2)) and attempting to dissuade a victim and witness from reporting a crime (CPC § 146.1(b)(1)). The trial court sentenced him to 120 days in custody, three years of probation, and sex offender registration. On appeal, the court reversed the sexual battery charged but affirmed the second charge. We could not determine what sentence the defendant actually served.

<sup>147</sup> *Farrell v. Narain*, No. 2:05-cv-07244 (C.D. Cal. Oct 5, 2005); *Farrell v. Narain*, No. 2:05-cv-05668 (C.D. Cal. Aug. 3, 2005); *Farrell v. Narain*, No. BC336690, 2005 WL 6522674 (Cal. Super. Ct. 2005); *Colin Farrell Sues Over Sex Tape*, THE SMOKING GUN (July 19, 2005), <http://www.thesmokinggun.com/documents/crime/colin-farrell-sues-over-sex-tape> [<https://perma.cc/78VW-KAYF>].

<sup>148</sup> *People v. Wood*, Nos. D054112 & D055201, 2009 Cal. App. Unpub. LEXIS 9959 (Dec. 17, 2009).

Case Name	Key Facts	Outcome
<i>S.B. v. Duffy</i> <sup>149</sup>	The victim's ex-boyfriend threatened to disseminate nude photos of the victim on a website and to her daughter's father. Even after a court hearing, he kept emailing the victim and posting information about her on his website.	The trial court entered a domestic violence final restraining order. The appeals court affirmed.
<i>State v. Stancl</i> <sup>150</sup>	Stancl pretended to be a teenage girl on Facebook and asked his high school classmates to send him nude photos. At least thirty-one male classmates did so. After receiving the photos, he threatened to disseminate the photos unless the senders had sex with him.	Stancl was charged with sexual assault, possession of child pornography, two counts each of second- and third-degree sexual assault, five counts of child enticement and more. "As part of a plea agreement, he pleaded no contest to and was convicted Dec. 22 of two felonies – repeated sexual assault of the same child and third-degree sexual assault. In exchange, the ten other felony counts were dismissed...." <sup>151</sup> He was sentenced to fifteen years in prison and thirteen years of supervised release; he was subject to a no-contact order; and he was

<sup>149</sup> *S.B. v. Duffy*, No. A-4495-07T1, 2009 N.J. Super. Unpub. LEXIS 2334 (Ct. App. Div. Aug. 31, 2009).

<sup>150</sup> *State v. Stancl*, No. 2009CF000134 (Wis. Cir. Ct. 2009); Complaint, *State v. Stancl*, No. 2009CF000134 (Wis. Cir. Ct. 2009), [https://www.wired.com/images\\_blogs/threatlevel/files/redactedstancl.pdf](https://www.wired.com/images_blogs/threatlevel/files/redactedstancl.pdf) [<https://perma.cc/W3FG-GLUC>]; Docket, *State v. Stancl*, No. 2009CF000134 (Wis. Cir. Ct. 2009), <https://archive.is/ocoW> (sentence was twelve years with ten years of supervised release); Susan Saulny, *Sex Predator Accusations Shake a Wisconsin Town*, N.Y. TIMES (Feb. 10, 2009), <http://www.nytimes.com/2009/02/11/us/11wisconsin.html> [<https://perma.cc/2JDV-RZDF>]; Laurel Walker, *Stancl Gets 15 years in Prison in Facebook Coercion Case*, MILWAUKEE J. SENTINEL (Feb. 24, 2010), [https://www.liveleak.com/view?i=228\\_1267116758](https://www.liveleak.com/view?i=228_1267116758) [<https://perma.cc/CY4E-ZCKW>].

<sup>151</sup> Walker, *supra* note 150.

Case Name	Key Facts	Outcome
		required to register as a sex offender. <sup>152</sup>
<i>People v. Cavazos</i> <sup>153</sup>	After they broke up, the victim's ex-boyfriend made unwanted calls and visits. He also recorded them having sex and threatened to disseminate the recording to the Internet or the victim's family.	A jury convicted the defendant of stalking, misdemeanor battery, and violation of a restraining order. The court sentenced him to state prison for two years for stalking, and to concurrent county jail terms of 237 days on the remaining counts. The appeals court affirmed.
<i>United States v. Beckett</i> <sup>154</sup>	The defendant posed as a teenage female on MySpace and solicited four underage boys to send nude photos. Once in possession of the photos, the defendant then threatened to disseminate photos if they did not engage in sexual activity with him. None of the boys actually did so.	The defendant was convicted of one count of child pornography possession (18 U.S.C. § 2252A(a)(5)(B)); sixteen counts of producing child pornography (18 U.S.C. § 2251(a)); and (3) attempted sexual coercion of four victims (18 U.S.C. § 2422(b)). The appeals court affirmed. The defendant was sentenced to 180 months in prison plus lifetime supervised release.
<i>People v. Ybarra</i> <sup>155</sup>	The parties dated. After they broke up, the defendant threatened to send sexually explicit photos of the victim to the victim's cellphone contacts.	The jury convicted the defendant of two counts of making criminal threats (Cal. Penal Code § 422). Combined with other criminal offenses, the trial court sentenced him to twelve years and four months. The appeals court affirmed.

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<sup>152</sup> *Id.*

<sup>153</sup> *People v. Cavazos*, No. A124274, 2010 Cal. App. Unpub. LEXIS 3420 (May 11, 2010).

<sup>154</sup> *United States v. Beckett*, No. 09-10579, 2010 WL 776049 (11th Cir. Mar. 9, 2010); *Beckett v. United States*, No. 9:11-cv-80678 (S.D. Fla. June 10, 2011).

<sup>155</sup> *People v. Ybarra*, No. B215202, 2010 WL 4886022 (Cal. Ct. App. Dec. 2, 2010).



<b>Case Name</b>	<b>Key Facts</b>	<b>Outcome</b>
<i>Serrano v. Butler</i> <sup>156</sup>	Ex-boyfriend attempted to coerce his ex-girlfriend into having sex by threatening to email a video of her, engaging in consensual sexual acts with a previous boyfriend, to her employer, school contacts, and amateur porn websites.	A jury convicted the defendant of attempted rape through coercion, and the court placed him on three years' probation. The appeals court affirmed. The California Supreme Court denied review. The defendant sought a writ of habeas corpus, which was denied.
<i>United States v. Shea</i> <sup>157</sup>	Defendant captured live web images of minor females exposing their breasts. Defendant then discovered the identity of the girls and threatened to send the photos to the victim's friends and family if they did not send more explicit images to the defendant.	Defendant pled guilty to sexual exploitation of minors (18 U.S.C. § 2251(a)) and was sentenced to 396 months in prison. The appeals court affirmed.
<i>Williams v. Williams</i> <sup>158</sup>	The parties were married. After they separated, the defendant harassed the plaintiff, including threats to send nude photos of the plaintiff to the plaintiff and her church leader.	The court issued a civil stalking injunction against the defendant. The appeals court affirmed.
<i>Backlund v. Stone</i> <sup>159</sup>	Stone operated a website called	Backlund sued Stone for public disclosure of private facts,

<sup>156</sup> *Serrano v. Butler*, No. C 06-04433 JW, 2010 U.S. Dist. LEXIS 137617 (N.D. Cal. Dec. 20, 2010).

<sup>157</sup> *United States v. Shea*, Nos. 12-1190 & 12-1191, 2012 U.S. App. LEXIS 20151 (7th Cir. Sept. 26, 2012).

<sup>158</sup> *Williams v. Williams*, 301 P.3d 1043 (Utah Ct. App. 2013).

Case Name	Key Facts	Outcome
	<p>StickyDrama.com. He posted a nude image of a third-party child that he falsely said depicted Backlund, and included her contact information. Subsequently, Stone tweeted that he would disseminate a topless photo of Backlund if she contacted Stone's roommate again.</p>	<p>defamation, and false light based on his threatening tweet. Stone brought an unsuccessful anti-SLAPP motion. He also cross-sued Backlund for defamation and IIED based on an interview she did. The appeals court granted Backlund's anti-SLAPP motion, and the trial court awarded her nearly \$110,000 in attorney's fees and costs. On the merits, the trial court awarded Backlund \$250,000 for pain and suffering, \$250,000 for emotional distress, \$320 for lost earnings, \$500,000 punitive damages and attorney's fees and costs of nearly \$130,000 (a total award of over \$1.1 million).<sup>160</sup> The court also awarded an injunction against further defamation.</p>
<i>E.C. v. C.B.T., Sr.</i> <sup>161</sup>	<p>The victim alleged that her ex-boyfriend stalked and threatened her, including threats to disseminate sexual photos of her on Craigslist and "other dirty sites."</p>	<p>The trial court issued a restraining order based on the Prevention of Domestic Violence Act (N.J.S.A. 2C:25-17 to -35). The appeals court reversed because the record did not prove the defendant's conduct caused the victim to fear for her safety.</p>

<sup>159</sup> Backlund v. Stone, No. B235173, 2012 WL 3800883 (Cal. Ct. App. Sept. 4, 2012); Complaint, Backlund v. Stone, No. BC449910, 2013 WL 3835962 (Cal. Super. Ct. May 13, 2013); Complaint, Backlund v. Stone, No. BC449910 (Cal. Super. Ct. Dec. 11, 2013), <http://digitalcommons.law.scu.edu/cgi/viewcontent.cgi?article=2375&context=historical> [https://perma.cc/XM9D-3YV7].

<sup>160</sup> These damage amounts apparently cover both the dissemination-related claims and others.

<sup>161</sup> *E.C. v. C.B.T., Sr.*, No. A-1185-12T2, 2013 WL 1858859 (N.J. Super. Ct. App. Div. May 6, 2013), <http://njlaw.rutgers.edu/collections/courts/appellate/a1185-12.opn.html> [https://perma.cc/D9LQ-2ZL8].

Case Name	Key Facts	Outcome
<i>United States v. Esler</i> <sup>162</sup>	Defendant met the minor victim online and got the victim to send explicit photos. The defendant then threatened to post the photos if the victim did not provide more photos.	Defendant pled guilty to receipt of child pornography (18 U.S.C. § 2252(a)(2)). The district court sentenced him to seventy months in prison followed by a twenty-year term of supervised release. The court further ordered \$37,750 in mandatory restitution pursuant to 18 U.S.C. § 3663(a) and § 2259. The appeals court affirmed.
<i>People v. Piznarski</i> <sup>163</sup>	While dating, Piznarski made an unauthorized recording of sexual activity with the victim. After they broke up, Piznarski threatened to disseminate the first recording if she did not engage in more sexual activity with him while he recorded it. The victim acquiesced to this demand. Investigators later discovered that the defendant had made an unauthorized recording of sexual activity with a second victim.	Piznarski was charged with two counts of unlawful surveillance in the second degree, criminal sexual act in the third degree, two counts of coercion in the second degree, unlawful imprisonment in the second degree, and (regarding the second victim) three counts of unlawful surveillance in the second degree. A jury convicted him of all charges except the unlawful imprisonment. The court sentenced him to one to three years in prison (with several concurrent sentences of lesser duration), issued protective orders for both victims, ordered him to pay restitution, and classified him as a Level 1 sex offender. The appeals court affirmed the conviction.
<i>United States v. Tarlow</i> <sup>164</sup>	Tarlow and the victim dated, and she	Tarlow was prosecuted for making a threat pursuant to 18

<sup>162</sup> *United States v. Esler*, No. 11-30479, 2013 WL 3185779 (5th Cir. June 24, 2013).

<sup>163</sup> *People v. Piznarski*, 2013 N.Y. App. Div. LEXIS 8089 (2013); *People v. Piznarski*, 2014 N.Y. Misc. LEXIS 5373 (Sup. Ct. 2014).

<sup>164</sup> Complaint, *United States v. Tarlow*, No. 3:15-cr-00239 (N.D. Cal. Apr. 30, 2015); *Billionaire's Kin Targeted In Naked Photos Extortion*, THE SMOKING GUN (Apr. 23, 2014), <http://www.thesmokinggun.com/documents/Khosla-family-extortion-plot-576432/> [https://perma.cc/7K72-43AP].

Case Name	Key Facts	Outcome
	provided him with nude photos. After they broke up, he sent some of the photos to the victim's mom and threatened to disseminate the photos more widely unless the mom paid him money.	U.S.C. § 875(d). He pled guilty and was subject to a diversion agreement, which he successfully completed.
<i>Clark v. McLane</i> <sup>165</sup>	The victim's ex-boyfriend threatened to post nude photos to a website and share the website with her friends and colleagues. The ex-boyfriend created a placeholder website that said nude photos were coming.	Before the photos were disseminated, the court issued a protective order to prevent "abusive" humiliation of the victim.
<i>United States v. Hutchinson</i> <sup>166</sup>	Defendant created fake online profiles to communicate with underage female victims and persuade them to send nude photos and contact information. After receiving the photos, the defendant would extort more photos by threatening to post the received photos online, threatening to send them to the victims' families, or threatening to harm the victim or their families. On some occasions, the defendant did post photos and videos of	Defendant was charged with twenty-four counts of federal child-sex crimes. Defendant pled guilty to sexual exploitation of children (18 U.S.C. § 2251(a) and (e)), enticement of minors of engage in criminal sexual activity (18 U.S.C. § 2422(b)), and transferring obscene materials to minors (18 U.S.C. § 1470). Defendant was sentenced to life imprisonment. The appeals court affirmed.

<sup>165</sup> *Clark v. McLane*, 86 A.3d 655 (Me. 2014).

<sup>166</sup> *United States v. Hutchinson*, 588 F. App'x 894 (11th Cir. 2014).

Case Name	Key Facts	Outcome
	victims who did not comply with his demands.	
<i>Rogers v. Brindle</i> <sup>167</sup>	A woman surreptitiously recorded a consensual sexual encounter with Rogers and then threatened to disseminate the recording.	Rogers sought to enjoin the video's dissemination based on invasion of privacy and IIED. <sup>168</sup> The trial court ruled that Rogers had a right to privacy in his bedroom, where the recording took place, and that the video recording was illegal. <sup>169</sup> The court awarded attorney's fees and litigation expenses to Rogers of \$142,656.82. <sup>170</sup> Rogers also sued the attorneys representing the woman, alleging they contributed to extortion. <sup>171</sup>
<i>State v. Schnitker</i> <sup>172</sup>	Defendant searched social media sites for	Defendant entered a voluntary plea agreement and was

<sup>167</sup> *Rogers v. Brindle*, 12-1-08807-53 (Ga. Super. Ct.); Juan Carlos Rodriguez, *Taped Sex Act Violated Waffle House CEO's Privacy: Judge*, LAW360 (June 17, 2013), <http://www.law360.com/articles/450665/taped-sex-act-violated-waffle-house-ceo-s-privacy-judge> [https://perma.cc/A85N-CWYQ]; Complaint, *Rogers v. Cohen*, No. 14-1-4143-53, 2014 WL 3107893 (Ga. Super. Ct. May 30, 2014), \http://media.cmgdigital.com/shared/news/documents/2014/06/10/1462684.pdf [https://perma.cc/4D6X-8TYD]. According to the complaint ¶51, "On October 16, 2012, the Court in the Fulton County Action entered a written Order confirming the oral ruling made on the record during the evidentiary hearing, finding that Rogers had a right to privacy in his bedroom and bathroom and finding that the video recording of Rogers violated criminal statute O.C.G.A. § 16-11-62." ¶61 further indicates an attorneys' fee award to Rogers of over \$140,000.

<sup>168</sup> *Cohen v. Rogers*, 789 S.E.2d 352 (Ga. Ct. App. 2016), <http://caselaw.findlaw.com/ga-court-of-appeals/1742437.html> [https://perma.cc/8SPS-R5ME].

<sup>169</sup> Jury Trial Demand, *Rogers v. Cohen et al.*, No. 14-1-4143-53 (Ga. Super. Ct. 2014), <http://media.cmgdigital.com/shared/news/documents/2014/06/10/1462684.pdf> [https://perma.cc/4D6X-8TYD].

<sup>170</sup> *Id.* at 15.

<sup>171</sup> Kathryn Hayes Tucker, *Judge Rules Lawyers Must Face Suit Over Illegal Sex Video*, LAW.COM (Feb. 17, 2016), <http://www.law.com/sites/articles/2016/02/17/judge-rules-lawyers-must-face-suit-over-illegal-sex-video/> [https://perma.cc/NH2W-B5R6].

<sup>172</sup> *State v. Schnitker*, 2015 Ohio 1685 (Ohio Ct. App. 2015).

Case Name	Key Facts	Outcome
	girls aged nine to fourteen, befriended them, and convinced them to send explicit photos of themselves. When girls refused to send more photos, the defendant threatened to post the already-received images online.	convicted of pandering sexually oriented materials involving a minor (Ohio Rev. Code § 2907.322). Defendant was sentenced to fourteen years in prison. The appeals court affirmed.
<i>United States v. Ackell</i> <sup>173</sup>	Defendant threatened to distribute explicit photos of the victim if she stopped communicating with him or failed to provide additional photos upon his request.	Defendant was convicted of cyberstalking (18 U.S.C. § 2261A(2)(B)). The district court rejected the defendant's constitutional challenges to the statute and various post-trial motions. He was sentenced to 33 months in prison, 3 years of supervised release and a \$100 special assessment.
<i>United States v. Browne</i> <sup>174</sup>	The defendant solicited sexual photos from minors and one adult via Facebook. Once he received the photos, he threatened to disseminate them online unless the victims agreed to engage in sexual acts with him.	The jury convicted the defendant of: four counts of producing child pornography (18 U.S.C. § 2251(a)); coercion and enticement of a minor to engage in sex (18 U.S.C. § 2422(b)); three counts of receipt of child pornography (18 U.S.C. § 2252(a)(2)); and three counts of transferring obscene material to minors (18 U.S.C. § 1470). The jury acquitted the defendant on other counts, and several charges were dismissed before the jury trial. The appeals court affirmed, and the Supreme Court denied certiorari.

<sup>173</sup> *United States v. Ackell*, No. 15-cr-123-JL, 2016 U.S. Dist. LEXIS 149751 (D. N.H. Oct. 28, 2016); *United States v. Ackell*, 2017 WL 2913452 (D. N.H. July 7, 2017).

<sup>174</sup> *United States v. Browne*, 834 F.3d 403 (3d Cir. 2016); *cert denied*, *Browne v. United States*, 137 S.Ct. 695 (2017).

## APPENDIX D

## ACTIONS AGAINST INTERMEDIARIES

Case Name	Key Facts	Outcome
The Pamela Anderson and Tommy Lee cases <sup>175</sup>	A video of Pamela Anderson Lee and Tommy Lee having sex was stolen and disseminated widely.	This recording spurred numerous lawsuits. Some of the most noteworthy developments include: publicity and privacy claims against Penthouse and Paramount failed because the video was deemed newsworthy; a copyright claim against Paramount failed on fair use grounds; the court denied an injunction against Internet Entertainment Group, and eventually Pamela and Tommy settled with IEG but were not paid some/all of the settlement amounts. <sup>176</sup>
The Scott Stapp/Kid Rock Sex Tape cases <sup>177</sup>	A website, World Wide Red Light District, published a video of famous rock singers Kid	One of the depicted women sued the website and Stapp for privacy invasion, publicity rights

<sup>175</sup> Lee v. Penthouse Int'l, No. CV 96-7069 SVW (JGx), 1997 U.S. Dist. LEXIS 23893 (C.D. Cal. Mar. 18, 1997); Michaels v. Internet Entm't Grp., Inc., 5 F. Supp. 2d 823 (C.D. Cal. 1998); Michaels v. Internet Entm't Grp., No. CV 98-0583 DDP (CWx), 1998 U.S. Dist. LEXIS 20786 (C.D. Cal. Sept. 10, 1998).

<sup>176</sup> Amanda Chicago Lewis, *Pam and Tommy: The Untold Story of the World's Most Infamous Sex Tape*, ROLLING STONE (Dec. 22, 2014), <http://www.rollingstone.com/culture/features/pam-and-tommy-the-untold-story-of-the-worlds-most-infamous-sex-tape-20141222> [https://perma.cc/JVE7-8EN8].

<sup>177</sup> Doe v. World Wide Red Light District, No. 2006-004056-CA-01 (Fla. Cir. Ct. complaint filed Mar. 2, 2006), <http://www.thesmokinggun.com/file/groupie-sues-over-rock-stapp-sex-video>; Stapp v. Worldwide Red Light District, Docket No. 2:06-cv-01570 (C.D. Cal. complaint filed Mar. 14, 2006); Ritchie v. World Wide Red Light District, No. 2:06-cv-10769 (E.D. Mich. complaint filed Feb. 21, 2006).

Case Name	Key Facts	Outcome
	Rock and Scott Stapp (from the band Creed) having sex with four women on a bus.	violations, and IIED. The court denied her request to sue anonymously. Stapp sued the website for copyright infringement and more. That case settled. Kid Rock sued the website for publicity rights, trademark infringement and privacy invasion. The court granted a TRO and then approved a stipulated injunction.
<i>Barnes v. Yahoo!</i> <sup>178</sup>	Ex-boyfriend created fake profiles on Yahoo-operated sites in the victim's name and posted nude photos along with the victim's contact information, which led to unwanted contact by third parties.	The victim sued Yahoo for negligence. The lower court dismissed on Section 230. The appeals court affirmed the negligence dismissal but said the plaintiff could pursue a promissory estoppel claim, which was not preempted by Section 230. The case subsequently settled.
<i>Doe v. Peterson</i> <sup>179</sup>	The victim provided explicit photos to her ex-boyfriend. Those photos appeared on various websites, including exgfpics.com, run by Peterson. The litigants disputed whether the victim was a minor or adult when she took the photos.	The victim sued for civil violations of the federal child pornography distribution law (18 U.S.C. § 2252A(a)(2)). The district court denied the victim's summary judgment motion, and the parties settled.
<i>GoDaddy.com</i>	The plaintiffs alleged	The plaintiffs sued for

<sup>178</sup> *Barnes v. Yahoo!, Inc.*, 570 F.3d 1096 (9th Cir. 2009); *Barnes v. Yahoo!, Inc.*, No. 05-926-AA, 2009 U.S. Dist. LEXIS 116274 (D. Or. Dec. 8, 2009); *see also Barnes v. Yahoo!, Inc.*, 2005 WL 3005602 (D. Or. Nov. 8, 2005).

<sup>179</sup> *Doe v. Peterson*, 784 F. Supp. 2d 831 (E.D. Mich. 2011).



Case Name	Key Facts	Outcome
<i>LLC v. Touns</i> <sup>180</sup>	that GoDaddy failed to remove “revenge porn” websites that it hosted.	gross negligence and IIED. GoDaddy defended on Section 230. The lower court denied GoDaddy’s motion to dismiss. The appeals court reversed, dismissing the case on Section 230 grounds.
<i>Conklin v. PinkMeth.com</i> <sup>181</sup>	The victim sued a “revenge porn” website and the TOR Network.	The TOR Network was dropped from the lawsuit. <sup>182</sup> Plaintiff’s counsel reported that the court granted “a \$1,000,000.00 default judgment and a permanent injunction.” <sup>183</sup>
<i>Doe v. Bollaert</i> <sup>184</sup>	Bollaert, Amy Chanson, Roy Chanson and others operated YouGotPosted, a website that solicited sexually explicit photos along with the depicted individuals’ name,	Bollaert and the Chansons defaulted. The judge found they knowingly distributed child pornography (18 U.S.C. § 2252A) and violated the victim’s publicity rights

<sup>180</sup> GoDaddy.com, *LLC v. Touns*, 429 S.W.3d 752 (Tex. App. 2014).

<sup>181</sup> Conklin v. PinkMeth.com, No. 14-04555431 (Tex. Dist. Ct. complaint filed June 17, 2014), <https://www.scribd.com/doc/233081133/233038130-Pink-Meth-Summons-and-Complaint> [<https://perma.cc/D8KN-8TB7>].

<sup>182</sup> Mike Masnick, *Ridiculous Lawsuit Filed (And Now Dropped) Against Tor Project Gets Even More Ridiculous: Now Involving Hate Group Leader*, TECHDIRT (July 10, 2014), <https://www.techdirt.com/articles/20140709/18055527833/ridiculous-lawsuit-filed-against-tor-project-gets-even-more-ridiculous-now-involving-hate-group-leader.shtml> [<https://perma.cc/RL5C-QKM4>].

<sup>183</sup> Email from Jason Lee Van Dyke to Eric Goldman (dated July 27, 2017) (on file with Eric Goldman).

<sup>184</sup> Complaint, *Doe v. Bollaert*, No. 2:13-CV-486 (S.D. Ohio May 21, 2013), <http://www.plainsite.org/dockets/download.html?id=32311460&z=ddo41f9e> [<https://perma.cc/5MEV-24RR>]; Order, *Doe v. Bollaert*, No. 2:13-CV-486 (S.D. Ohio Mar. 18, 2014), <http://www.plainsite.org/dockets/download.html?id=167384616&z=of1b373e> [<https://perma.cc/7PAM-T8VC>]; see also Press Release, State of California Department of Justice, Office of the Attorney General, *Attorney General Kamala D. Harris Announces 18 year Prison Sentence for Cyber-Exploitation Website Operator* (Apr. 3, 2015), <https://oag.ca.gov/news/press-releases/attorney-general-kamala-d-harris-announces-18-year-prison-sentence-cyber> [<https://perma.cc/P5VP-UMBE>]; *supra* note 176.

Case Name	Key Facts	Outcome
	location, age, and Facebook profile link. Bollaert operated a second website where depicted individuals could pay-to-remove the photos. The plaintiff discovered that several sexually explicit photos, taken when she was a minor, were posted to the website.	(Ohio Revised Code § 2741.02). The court awarded \$385,000 in damages, consisting of \$300,000 for the child porn violations, \$10,000 for the publicity rights violations, and \$75,000 in punitive damages. The victim later settled with the Chansons. <sup>185</sup>
<i>Talley v. Chanson</i> <sup>186</sup>	Similar facts to <i>Doe v. Bollaert</i> .	The judge granted a default judgment including a permanent injunction. The judge awarded the plaintiffs \$450,000 from each of the two defendants (a total of \$900,000). Each damages award consisted of \$150,000 for the child porn violations (18 U.S.C. §§ 2252 & 2252A), \$150,000 for associated punitive damages, and \$150,000 for statutory publicity rights violations (Cal. Civil Code § 3344(a)). The defendants were enjoined from using the photos and ordered to

<sup>185</sup> See Stipulation of Dismissal with Prejudice and Order by Plaintiff Jane Doe, No. 2:13-CV-485 (S.D. Ohio June 16, 2014); Joint Stipulation for Dismissal with Prejudice and Order, *Doe v. Bollaert*, No. 2:13-CV-486 (S.D. Ohio June 17, 2014), <http://www.plainsite.org/dockets/download.html?id=167384619&z=95bc33b1> [<https://perma.cc/24XT-A98A>].

<sup>186</sup> Order Granting Motion for Default Judgment Against Defendants Eric Chanson and Kevin Bollaert, No. 13-CV-1238-CAB-BLM (S.D. Cal. Feb. 25, 2015), <https://randazza.files.wordpress.com/2015/02/040-order-granting-motion-for-default-judgment.pdf> [<https://perma.cc/VXW6-K4C2>]. The Chansons also were sued over the “IsAnyoneUp?” trademarks. See *ViaView, Inc. v. Chanson*, 2013 WL 1405353 (D. Nev. Apr. 4, 2013); *ViaView, Inc. v. Blue Mist Media*, 2012 WL 6007204 (D. Nev. Nov. 30, 2012).

Case Name	Key Facts	Outcome
<i>People v. Bollaert</i> <sup>187</sup>	As described above, Bollaert operated a pornographic website requesting user submissions and a separate service offering a way to pay-to-remove submissions.	destroy them. The court convicted Bollaert of extortion (Cal. Penal Code § 520) and identity theft (Cal. Penal Code § 530.5) and sentenced him to eighteen years in prison; later reduced to eight years in jail plus ten years mandatory supervision in the community. <sup>188</sup> He was also ordered to pay \$15,000 in restitution and a \$10,000 fine. The appeals court affirmed the conviction, holding that 47 U.S.C. § 230 did not apply to Bollaert. <sup>189</sup>
WinByState Prosecution (Casey Meyering) <sup>190</sup>	Defendant operated a website, WinByState.com, which requested users to	Defendant pled no contest to extortion, attempted extortion (three counts), and conspiracy.

<sup>187</sup> Press Release, State of California Department of Justice, Office of the Attorney General, *Attorney General Kamala D. Harris Announces 18 year Prison Sentence for Cyber-Exploitation Website Operator* (Apr. 3, 2015), <https://oag.ca.gov/news/press-releases/attorney-general-kamala-d-harris-announces-18-year-prison-sentence-cyber> [https://perma.cc/6W9Y-AQ8R].

<sup>188</sup> Terry Carter, *Revenge Porn Website Operator Has His Sentence Reduced by Judge*, ABA J. (Sept. 22, 2015), [http://www.abajournal.com/news/article/revenge\\_porn\\_site\\_operator\\_has\\_his\\_sentence\\_reduced\\_by\\_judge](http://www.abajournal.com/news/article/revenge_porn_site_operator_has_his_sentence_reduced_by_judge) [https://perma.cc/BQV7-WJ42]; Laurie Hanna, *'Revenge Porn' Website Owner Kevin Bollaert Has Sentence Reduced by 10 Years*, N.Y. DAILY NEWS (Sept. 23, 2015), <http://www.nydailynews.com/news/national/revenge-porn-website-owner-sentence-reduced-article-1.2370925> [https://perma.cc/UGL6-5DMV].

<sup>189</sup> *People v. Bollaert*, 248 Cal. App. 4th 699 (2016).

<sup>190</sup> Unfortunately, we have not found original source materials in this case, so we relied on press releases from the California Department of Justice. See Press Release, *Attorney General Kamala D. Harris Announces Arrest of Revenge Porn Operator in Oklahoma*, STATE OF CALIFORNIA DEPT. OF JUSTICE, OFFICE OF THE ATTORNEY GENERAL (Feb. 14, 2014), <https://oag.ca.gov/news/press-releases/attorney-general-kamala-d-harris-announces-arrest-revenge-porn-operator-oklahoma> [https://perma.cc/HN3E-VAZ7]; Press Release, *Attorney General Kamala D. Harris Announces Three-Year Sentence for Cyber Exploitation Website Operator*, STATE OF CALIFORNIA DEPT. OF JUSTICE, OFFICE OF THE

Case Name	Key Facts	Outcome
	submit sexually explicit photos, posted them (including allegedly at least one minor), and charged victims \$250 to remove postings.	Defendant was sentenced to three years in jail.
<i>In re Brittain</i> <sup>191</sup>	The defendant allegedly ran a website soliciting the anonymous submission of nonconsensual pornography (plus personal information about depicted individuals, such as their full names, locations, phone numbers, and Facebook profiles) and then offering victims a way to pay-to-remove the items. Additionally, the defendant allegedly posed as a woman on Craigslist and collected nude photos from people with whom he communicated.	The FTC alleged a violation of the Federal Trade Commission Act (15 U.S.C. § 45). The parties settled. The defendant agreed to delete all information gathered during the website's operation and not display any intimate images without the depicted individuals' affirmative consent.
<i>United States v. Moore</i> <sup>192</sup>	Moore operated a pornographic website,	Moore and Evens both pled guilty to violating the

ATTORNEY GENERAL (June 8, 2015), <https://oag.ca.gov/news/press-releases/attorney-general-kamala-d-harris-announces-three-year-sentence-cyber> [<https://perma.cc/3E58-US37>]. We found the following case references but could not obtain any associated documentation: Meyering v. Superior Court, No. A143682 (Cal. App. Ct. Dec. 9, 2014); State v. Meyering, No. CF-2014-793 (Okla. Dist. Ct. Feb. 25, 2014).

<sup>191</sup> Complaint, In the Matter of Craig Brittain, No. C-4564 (F.T.C. Dec. 28, 2015); Decision and Order, In the Matter of Craig Brittain, No. C-4564 (F.T.C. Dec. 28, 2015); *FTC Approves Final Order in Craig Brittain ‘Revenge Porn’ Case*, FEDERAL TRADE COMMISSION (Jan. 8, 2016), <https://www.ftc.gov/news-events/press-releases/2016/01/ftc-approves-final-order-craig-brittain-revenge-porn-case> [<https://perma.cc/4YAE-6KRL>].

<sup>192</sup> *Man Who Operated ‘Revenge Porn’ Website Pleads Guilty in Hacking Scheme That Yielded Nude Photos from Google E-Mail Accounts*, FBI (Feb. 25, 2016), <https://www.fbi.gov/losangeles/press-releases/2015/man-who-operated-revenge-porn-website-pleads-guilty-in-hacking-scheme-that-yielded-nude-photos-from-google-e-mail-accounts> [<https://perma.cc/R8M2-GA5X>].

Case Name	Key Facts	Outcome
	isanyoneup.com, similar to the website operated by Bollaert. To expand the database, the defendant allegedly retained Evens to hack into Gmail accounts to find more photos. <sup>193</sup>	Computer Fraud & Abuse Act and identity theft. <sup>194</sup> Moore was sentenced to thirty months in prison. <sup>195</sup> Evens was sentenced to one month for the CFAA count and a mandatory two-year term for the identity theft count. <sup>196</sup> Evens also had to pay a fine of \$2,000 and perform twenty hours of community service. <sup>197</sup> The defendants also owed \$147.50 in restitution to a victim. <sup>198</sup>

<sup>193</sup> Press Release, *Operator of 'Revenge Porn' Website Sentenced to 2½ Years in Federal Prison in Email Hacking Scheme to Obtain Nude Photos*, DEP'T OF JUST., U.S. ATT'Y OFFICE, C.D. CAL. (Dec. 2, 2015), <https://www.justice.gov/usao-cdca/pr/operator-revenge-porn-website-sentenced-2-years-federal-prison-email-hacking-scheme> [https://perma.cc/82XW-XT8U].

<sup>194</sup> Plea Agreement for Hunter Moore, *United States v. Moore*, No. CR 13-917-DMG (C.D. Cal. Feb. 18, 2015); Press Release, *Operator of 'Revenge Porn' Website Sentenced to 2½ Years in Federal Prison in Email Hacking Scheme to Obtain Nude Photos*, DEP'T OF JUST., U.S. ATT'Y OFFICE, C.D. CAL. (Dec. 2, 2015), <https://www.justice.gov/usao-cdca/pr/operator-revenge-porn-website-sentenced-2-years-federal-prison-email-hacking-scheme> [https://perma.cc/8EFB-NYTX]; Press Release, *L.A. Man Who Hacked into Email Accounts and Obtained Nude Photos for 'Revenge Porn' Website Sentenced to Federal Prison*, DEP'T OF JUST., U.S. ATT'Y OFFICE, C.D. CAL. (Nov. 16, 2015), <https://www.justice.gov/usao-cdca/pr/la-man-who-hacked-email-accounts-and-obtained-nude-photos-revenge-porn-website> [https://perma.cc/EN27-SALA].

<sup>195</sup> Judgment and Probation/Commitment Order, *United States v. Moore*, No. CR 13-917-DMG (C.D. Cal. Dec. 2, 2015).

<sup>196</sup> Press Release, *L.A. Man Who Hacked into Email Accounts and Obtained Nude Photos for 'Revenge Porn' Website Sentenced to Federal Prison*, DEP'T OF JUST., U.S. ATT'Y OFFICE, C.D. CAL. (Nov. 16, 2015), <https://www.justice.gov/usao-cdca/pr/la-man-who-hacked-email-accounts-and-obtained-nude-photos-revenge-porn-website> [https://perma.cc/4Y27-X4NK].

<sup>197</sup> Andrew Blake, *Charles Evens, 'Revenge Porn' Hacker, Handed 25-Month Prison Sentence*, WASH. TIMES (Nov. 18, 2015), <http://www.washingtontimes.com/news/2015/nov/18/charles-evens-revenge-porn-hacker-handed-25-month-/> [https://perma.cc/F3BD-PTJ8].

<sup>198</sup> Judgment and Probation/Commitment Order, *United States v. Moore*, No. CR 13-917-DMG (C.D. Cal. Dec. 2, 2015).

Case Name	Key Facts	Outcome
<i>Caraccioli v. Facebook, Inc.</i> <sup>199</sup>	An unknown actor created a fake Facebook account called “Franco Caracciolijerkingman,” which included sexually explicit photos and videos of the victim, and sent friend requests to people in the victim’s network.	The victim sued Facebook asserting defamation, privacy violations, IIED, NIED, contract breach and other claims. The court granted Facebook’s motion to dismiss based on both Facebook’s user agreement and Section 230. The appeals court affirmed.

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<sup>199</sup> *Caraccioli v. Facebook, Inc.*, 167 F.Supp.3d 1056 (N.D. Cal. 2016); *Caraccioli v. Facebook, Inc.*, 2017 U.S. App. LEXIS 10040 (9th Cir. June 6, 2017).